CLERK'S COPY.

TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1947

No. 415

EARL J. TOOMER, JOSEPH A. CESARONI, JOSEPH DEGRACIA, ET AL., APPELLANTS,

vs.

J. M. WITSELL, EDWARD E. BURROUGHS, E. L. SWEAT, ET AL., ETC.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF SOUTH CAROLINA

FILED OCTOBER 27, 1947.

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1947

No. 415

EARL J. TOOMER, JOSEPH A. CESARONI, JOSEPH DEGRACIA, ET AL., APPELLANTS,

vs.

J. M. WITSELL, EDWARD E. BURROUGHS, E. L. SWEAT, ET AL., ETC.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF SOUTH CAROLINA

INDEX

	Original	Print
Record from D. C. U. S., Eastern District of South Carolina	1	1
Caption (omitted in printing)	1	
Petition	2	1
Exhibit "A"—Section 3304 of Civil Code of South Carolina of 1942	16	11
Exhibit "B"—Section 3301 of Civil Code of South Carolina of 1942	17	11
Exhibit "C"—Section 3308 of Civil Code of South Carolina of 1942	18	11
Exhibit "D"—Section 3310 of Civil Code of South Carolina of 1942	19	12
Exhibit "E"—Section 2038 of Civil Code of South Carolina of 1942	20	12
Exhibit "F"—Section 3300 of Civil Code of South Carolina of 1942	22	14

JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., DEC. 11, 1947.

—3795

	Original	Print
Record from D. C. U. S., Eastern District of South Carolina—Continued		
Petition—Continued		
Exhibits—Continued		
Exhibit "G"—Act amending Section 3379 of Civil Code of South Carolina 1942	23	14
Exhibit "H"—Section 3414 of Civil Code of South Carolina of 1942	26	17
Exhibit "I"—Section 3328 of Civil Code of South Carolina of 1942	27	17
Order to show cause, etc.	28	18
Amendment to petition	30	19
Exhibit "J"—Section 3410 of Civil Code of South Carolina of 1942	34	22
Exhibit "K"—Section 3374 of Civil Code of South Carolina of 1942	35	22
Return to rule to show cause on temporary restraining order	36	23
Order denying motion for temporary restraining order	38	24
Return and answer	39	24
Stipulation as to facts and testimony	45	29
Exhibits:		
"A"—Annual Report of South Carolina Board of Fisheries for Year 1944	54	37
"B"—Annual Report of South Carolina Board of Fisheries for Year 1945	57	39
"C"—Annual Report of South Carolina Board of Fisheries for Year 1946	60	42
"D"—Excerpts from Annual Report of South Carolina Board of Fisheries for Year 1942	63	44
"E"—Excerpts from Annual Report of South Carolina Board of Fisheries for Year 1943	64	45
"F"—Excerpts from Annual Report of South Carolina Board of Fisheries for Year 1944	65	46
"G"—Excerpts from Annual Report of South Carolina Board of Fisheries for Year 1945	66	47
"H"—Excerpts from Annual Report of South Carolina Board of Fisheries for Year 1946	68	48
"I"—Statement re cost of operations of South Carolina Board of Fisheries for Years 1942 to 1946	69	48
Order approving stipulation	69a	49
Reporter's transcript of hearing (omitted in printing)	70	
Opinion, Parker, J.	71	49
Findings of fact and conclusions of law	83	60
Final decree	86	62
Petition for appeal	87	63
Assignment of errors	88	63
Order allowing appeal	90	65
Appeal bond (omitted in printing)	91	
Praecipe for transcript of record (omitted in printing)	93	

	Original	Print
Record from D. C. U. S., Eastern District of South Carolina—Continued		
Citation and service (omitted in printing)	95	
Order to transmit certain Original Exhibits (omitted in printing)	96	
Clerk's certificate (omitted in printing)	97	
Statement of points to be relied upon and designation of record	98	66
Order noting probable jurisdiction	104	69

[fols. 1-2]

IN THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF SOUTH CAROLINA, CHARLESTON DIVISION

PETITION—Filed August 6, 1947

To the Honorable J. Waties Waring, Judge of said Court:

The petition of Earl J. Toomer, Joseph A. Cesaroni, Joseph DeGracia, S. W. Davies, S. D. Collins, and The Atlantic Seafood Producers, Inc., a Corporation organized and existing under the laws of the State of Florida, respectfully shows:

1. That Earl J. Toomer, Joseph A. Cesaroni, Joseph DeGracia, S. W. Davies and S. D. Collins are taxpayers and citizens of the United States and residents of the State of Georgia, and that The Atlantic Seafood Producers, Inc., is a legal entity, a resident in contemplation of the law of the State of Florida. That the defendants hereinafter named in saod proceeding are residents of the State of South Carolina and that there is, therefore, a diversity of citizenship.

2. That the amount in controversy as hereafter appears in said petition in in excess of Three Thousand ($3,000.00) Dollars and that the constitutionality of certain statutes of the State of South Carolina, the legality of which are being attacked in said petition as will hereinafter appear, is involved and the constitutional rights of your petitioners are also involved, as a result of which said Court has jurisdiction in the premises.

3. That prior to January 1, 1947 the Legislature of South Carolina, by Statute, created a State Board of Fisheries now composed of five members, whose duties are set forth in said Act and in various amendments to the original act, said State Board of Fisheries being made a corporate body and for the powers of said State Board of Fisheries reference is made to Exhibit "A", in which Section 3304 of the Civil Code of South Carolina of 1942, Volume II, is set out, and reference is also made to said same Civil Code of South Carolina of 1942, Section 3301 as to the jurisdiction of said State Board of Fisheries, and to Section 3308 of said Civil [fol. 3] Code of South Carolina of 1942 in which the Board is authorized to enforce all laws pertaining to fish and fish-

eries, and Section 3310 in which the Board is authorized to make all laws and to prosecute persons for violation, said Sections being set out as Exhibits "B", "C" and "D" respectively, and by reference incorporated in said petition.

4. That in accordance with the provisions of said Statute creating a State Board of Fisheries, the following members of said State Board of Fisheries have been appointed and now constitute said Board, to-wit: J. M. Witsell, Chairman, Edward E. Burroughs, E. L. Sweat, C. L. Young and J. A. Wilcox. That Alonzo B. Seabrook is Chief Inspector of said Commission and all of said persons are citizens of the United States and residents of the Eastern District of the State of South Carolina, and with the office of said Board at Charleston.

5. That prior to the creation of the State Board of Fisheries to control the trawling for shrimp, fish, etc. along the coastal waters beyond the low-water mark along the coast off the shores of South Carolina, the jurisdiction and boundaries of the State of South Carolina were expressly set out in the Civil Code of South Carolina of 1942, Volume II, Section 2038, in which the boundaries of said State were specifically limited to the Atlantic Ocean on the East from the mouth of the Savannah River to the Northern Boundary near the mouth of the Little River, including all islands, said boundary limits being set out in Section 2038 of said Civil Code of South Carolina, marked Exhibit "E" and attached to this petition. That it was only after the attempt was made to restrict and to interfere with the fishing enterprise off the coast of South Carolina that any assertion of authority was made by the State of South Carolina as to jurisdiction in said waters, said assertion of additional authority being contained in Section 3300 of the Civil Code of South Carolina of 1942, in which the State of South Carolina now contends that the waters and bottoms of the bays, [fol. 4] rivers, creeks and marshes within the State or within three miles of any point along the low water mark on the coast thereof shall be deemed and considered as part of the State of South Carolina and subject to its laws and jurisdiction, said claim of jurisdiction and authority being set out in Exhibit "F" and made a part of this petition.

6. Petitioners show that they are engaged in commercial fishing, owning and operating fleets of shrimp and fish trawlers off the coasts of Georgia, South Carolina, Florida

and North Carolina. That said petitioners are domiciled citizens of the States of Georgia and Florida and their said personal property is returned for taxes and they are licensed to operate said businesses by their respective states and localities. That said boats, including tackle and equipment used in connection therewith, are reasonably worth at least One Hundred Fifty Thousand ($150,000.00) Dollars, and that the income therefrom is in excess of Ten Thousand ($10,000.00) Dollars per week during the fishing season.

7. That the boats of the Plaintiffs are engaged in catching fish and shrimp, which are classified as ferae naturae and which are migratory in nature, being found in the coastal waters of the United States and having no fixed place of habitat or abode. That said Plaintiffs have been engaged in said occupation, which is a lawful and legitimate business, for a period of more that ten years. That prior to the passage of the recent Acts of the State of South Carolina, which are attacked herein, the rights of your petitioners as American citizens to carry on said useful and gainful occupation and business, out of which they earned certain profits and benefits, were recognized and no efforts were made by the authorities of the State of South Carolina to infringe on their Constitutional rights.

8. Petitioners show that their fleet of boats operate in the open sea along the Atlantic coast off the shore line from Florida, Georgia, South Carolina and North Carolina, a distance ranging from one-half to ten miles off the coasts of said States and none of said fishing or shrimping is carried on in sounds, bays, rivers, creeks or inland waters [fol. 5] generally recognized as belonging to the sovereignty of the State through which said sounds, creeks, rivers and bays flow and which are surrounded or enclosed by land; and said petitioners, to-wit: Earl J. Toomer, Joseph A. Cesaroni, Joseph DeGracia, S. W. Davies and S. D. Collins, were so engaged in the operation of said vessels upon the high seas during the fishing season for the year 1947 at the time that they, as owners and operators of said vessels, together with the masters thereof, were charged in criminal warrants, issued for their arrest on the instructions of the agents, servants and employees of the Sta. Board of Fisheries and the Chief Inspector thereof, with the alleged violation of the Statutes of South Carolina hereinabove set forth.

9. Petitioners further show that in order to make it impossible for them as residents of the States of Florida and Georgia, to profitably engage in their business of fishing and trawling for shrimp in the coastal waters off the shores of South Carolina, that said State enacted the various Statutes set out in said petition and amended Section 3379 of the Civil Code of South Carolina of 1942 by an Act, copy of which is attached hereto as Exhibit "G" and made a part of said petition, and in which amended Section as aforesaid, the State of South Carolina undertook to create various classifications, to-wit: that all owners of shrimp boats, residents of the State of South Carolina, are only required to pay a license of Twenty-five ($25.00) Dollars per year, but all owners of shrimp boats, who are non-residents of the State of South Carolina, are required to pay a license of Twenty-five Hundred ($2500.00) Dollars per year unless they have had one or more boats licensed in South Carolina during the previous years, in which event a license should be One Hundred Fifty ($150.00) Dollars for each boat, with the additional provision that non-resident licenses of the One Hundred Fifty ($150.00) Dollars classification issued by said Board shall in no event exceed one hundred (100) licenses per year, and with the further provision that no non-resident license should be issued to any non-resident until said non-resident shall first have furnished proof that he had paid all income taxes due to the State of South Carolina for profits made from operation in South Carolina [fol. 6] during the preceding year on said boat.

10. In addition to said unreasonable, onerous and illegal and confiscatory levying of taxes under said Statute as set out in the previous paragraph, and as part of said Act, the State of South Carolina has enacted a Statute known as Section 3414 of the Civil Code of the State of South Carolina of 1942, Volume II, referred to herein as Exhibit "H" attached hereto, in which Statute all owners of boats licensed by the State of South Carolina to trawl for shrimp in the waters of South Carolina or within three (3) miles of the low water mark of the coast thereof, are required to bring their boats into the ports of South Carolina and there unload their catch of shrimp and pack and properly stamp the same before shipping or transporting them to another state or the waters thereof, and in the event of a failure to comply with said provision of the law they shall not only be held criminally liable for violation thereof,

but the said State Board of Fisherie
to revoke their license to operate with
Carolina, and also the right to seize
tackle and the property contained t
shall be confiscated to the people of th
lina. In order to carry out said law
Civil Code of South Carolina of 194
acted, known as Exhibit "I", incorpo
a part of said petition, wherein the
agents for the State Board of Fishe
trary to the Constitution of the U
Amendments thereto, to enter any an
boats, houses, sheds or out-houses u
fishing industry in the tide waters or
the State, and to arrest without warr
guilty of violating said coastal fisher

11. Petitioners show that all of sa
gaged in the common purpose of comm
equally interested in the constitutio
said Statutes passed, for the reason
[fol. 6a] said Statutes have been dec
by the Courts, your petitioners will
profitably in the coastal waters off the
lina and will not be able to carry on t
or for profit and will be subject to arr
confiscated if they should attempt to
of their business.

12. Petitioners show that they, thei
employees, have been and were en
trawling for shrimp beyond the low w
open sea off the coast of South Car
fishing season and that on the 10th da
so engaged approximately two miles
mark off the coast of the State of Sou
were issued for the arrest of the owne
vessels for violation of Sections 3410
set forth, charging your petitioners
non-resident fishing licenses from the
lina and failure to bring the fish and
coast of South Carolina into the ports
purpose of being checked, packed an
to the State of South Carolina prior to
without said State, and warrants have
arresting officers in the City of Savan

Georgia for the arrest of said petitioners and their return to the State Courts of South Carolina to be tried for said offense.

13. Petitioners show that in addition to said warrants for arrest, they have been threatened with repeated arrests and criminal prosecution and with the seizure of their boats and equipment in the event they should continue fishing operations in the coastal waters off the coast of South Carolina without complying with said Statutes, and as a result of said threat of further prosecutions petitioners have been forced to discontinue their business in said coastal waters, causing them to suffer the loss of thousands of dollars from revenues that they would otherwise have received from fishing and shrimping in said coastal waters, and in addition thereto have been compelled to pay the salaries of em-
[fol. 7] ployees while said vessels were idle and as a result thereof are suffering losses of revenue during said fishing season in excess of Ten Thousand ($10,000.00) Dollars per week.

14. Petitioners show that the State of South Carolina is without authority to regulate or to tax the fishing industry upon the open seas and said attempted exercise of authority on the part of said State as set out in the Statutes attached hereto is in contravention and in violation of the Fourteenth Amendment to the Constitution of the United States in the following respects:

(a) In that it deprives Plaintiffs of their property without due process of law and denies to the Plaintiffs equal protection of the law,

(b) Said Statutes are unconstitutional and invalid in that they set up arbitrary classifications and confer special privileges without any reasonable grounds appearing for said distinction and said Statutes do not apply alike to all persons within the same class.

(c) Said Statutes attempt to create a monopoly to the advantage of citizens of South Carolina so as to close the waters off the coast of South Carolina to residents of every other State except that of South Carolina, in violation of the Constitution of the United States, Article 4, Section 2, which provides that the citizens of every State sheall be entitled to all the privileges and immunities of the citizens of the several states.

(d) Said Statutes are in violation of the Fourteenth Amendment to the Constitution of the United States in that the same are discriminatory and in violation of said Amendment, which provides that all persons born or naturalized in the United States and subject to the jurisdiction thereof are citizens of the United States and of the State wherein they reside and no State shall make or enforce any law which shall abridge the immunities or privileges of citizens of the United States nor deprive any person of life, liberty or property without due process of law, nor to deny to any person within its jurisdiction the equal protection of the law.

[fol. 8] (e) Requiring the payment of a privilege license of Twenty-five Hundred ($2500.00) Dollars, the payment of State income tax for the preceding year, the bringing of said fish into one of the prots of South Carolina for packing and shipping requiring the rental or ownership of facilities for said purpose, and the paying of a tax on said fish or shrimp constitutes such a heavy burden of said business as to prevent petitioners from earning a fair return of their investment, and therefore said measures make the carrying on of said business prohibitive and said Statutes are confiscatory and prohibitory and constitute an unreasonable and unjustified interference with the rights of petitioners to earn a livelihood in said business.

15. That said classifications and distinctions do not appertain or relate to and are not necessary to the conservation and preservation of the fish, which objects and purposes are the only ones for which legislation may be passed.

16. That the said provision requiring the boats to bring the catch into the ports of South Carolina for the purpose of being taxed thereon and shipping the same therefrom does not relate to the conservation or preservation of said shrimp and fish and places an undue, unjustified and unfair burden on the use of such boats and vessels in interstate and foreign commerce; and infringes upon the right to Congress to legislate exclusively in said fields;

17. Petitioners further show that the said provisions with reference to the licensing of non-resident vessels grants a special privilege and favor to those persons using boats or vessels previously having commercial fishing licenses and wrongfully discriminates against others similarly situated not falling within said classification.

18. That said amended Section 3379 is confiscatory and retroactive and is an ex post facto law in violation of the Statutes of the United States in that said Statute, in addition to the discriminatory and unreasonable classification relating to licenses in Section 1 and 2 thereof, provides that [fol. 9] no non-resident license shall be issued for the year 1948 and thereafter until the owner of such non-resident boat has paid all income taxes due to the State of South Carolina for profits made from operations in said State during the preceding year, irrespective of the sources of said income, which in effect is double taxation, requiring income taxes to be paid by persones in a State other than that in which he is domiciled.

19. That under the Constitution of the United States and laws passed in pursuance thereof, the business in which your petitioners are engaged in interstate commerce and the State of South Carolina is without the legal authority or jurisdiction to regulate the business of fishing upon the high seas, or to impose any taxes for the privilege of engaging in said business, or to require the payment of personal taxes on non-resident properties used in said operation, or to impose any taxes on the fish or shrimp caught and captured as a result of said operation on the high seas; and said attempt to place such restrictions and taxes upon the operation of said business as aforesaid, the properties used in connection therewith, and the catch therefrom, is illegal and contrary to the Fourteenth Amendment to the Constitution of the United States and constitutes a taking of said property without due process of law.

20. Petitioners show that they have no adequate remedy at law and that if they are required to resist said proceedings that there will be a multiplicity of suits resulting therefrom and that they will be placed in jeopardy of their lives, persons and property, and that the cost of litigating the various actions as they are brought and the filing of proceedings to recover the boats if they are seized, will be prohibitive and expensive and that they will be unable to retain in their employ a large number of persons necessary to engage in said business for the reason that said persons will refuse to have their liberty repeatedly placed in jeopardy dependent upon the possibility that said statutes may eventually be declared illegal and unconstitutional.

[fol. 10] 21. Petitioners show that all of said Statutes, whether passed at the same or various times, were all passed

as a result of a general scheme and purpose to illegally discriminate in favor of the residents of South Carolina and against the residents of other states, and for the sole purpose of making it impossible for your petitioners to profitably engage in a legitimate business which they are entitled to pursue as citizens of the United States, and that said Court has jurisdiction in the premises to grant them the relief which they seek.

22. Petitioners aver that said Court has the power to assume jurisdiction in said matter in order to protect the rights and property of your petitioners, and has the power to restrain the present pending criminal proceedings and all other proceedings which might be instituted by the authorities of South Carolina in pursuance of said illegal and unconstitutional statutes, and to set aside and decree as invalid certain Statutes which said Court may find infringe upon the legal rights of your petitioners as citizens of the United States, and in a sweeping decree to define the rights of all of the parties concerned in order that your petitioners and such other persons as may be vitally interested in said proceedings shall know just what the legal rights, duties and responsibilities of the various persons involved in said fishing business shall be.

23. That said Court is required by the Judicial Code of the United States To convene a three-judge court to determine the validity and constitutionality of said Statutes and the propriety of granting the application for an interlocutory injunction; and it is the duty of said District Court, pending the convening of the three-Judge Court, to issue a rule nisi directed to said defendaudts, giving them five (5) days notice of the application for an interlocutory and permanent injunction. Said District Court has the right in view of the irreparable losses which petitioners are sustaining to grant a temporary restraining order to restrain the State Board of Fisheries and their agents, servants and employees, from enforcing the Statutes of the State of South Carolina as set out in said petition.

[fol. 11] 24. Petitioners show that the fishing and shrimping season opened in the coastal waters off the State of South Carolina July 1, 1947 and continues until September 1st, 1947 and as a result of said illegal interference with the rights of petitioners to fish and shrimp in said waters, said boats are idle, and unless immediate relief is afforded by restraining said illegal interference, said season will have

ended and petitioners will have suffered irretrievable and irraparable loss and injury.

Wherefore waiving discovery petitioners pray:

(a) That the Statutes set out in said petition be decreed to be unconstitutional and illegal and in contravention of the constitutional rights of said petitioners in said petition.

(b) That said Court issue a temporary restraining order, restraining said defendants from proceeding further in the enforcement of said Statutes of the State of South Carolina as set out in said petition until a three-Judge Court can convene and determine the grant or refusal of an interlocutory injunction.

(c) That a rule nisi issue directed to said defendants, giving them five (5) days notice of said application for an interlocutory injunction and that said defendants be cited to appear before a three-Judge Court to be designated by said District Court, and to show cause at said time why an interlocutory injunction as prayed for should not be granted.

(d) That an interlocutory injunction be granted as prayed, restraining and enjoining the enforcement of the Statutes of South Carolina as set out in said petition on the grounds that the same are illegal and unconstitutional and in contravention of Plaintiffs' rights in the premises.

(e) That a permanent injunction be granted to your petitioners by *siad* three-Judge Court to be convened by said District Court and that said Statutes as set out in said petition be decreed to be unconstitutional and illegal for the grounds set out in said petition.

(f) That subpoena or summons issue directed to said de-
[fol. 12] fendants requiring them to be and appear at the next term of the U. S. District Court for the Eastern District of South Carolina, Charleston Divistion, to answer petitioners upon the merits of their comp-aint.

(S.) Aaron Kravitch, Robert E. Falligant, Attorneys for Petitioners; Thos. P. Bussey, Attorney of Counsel for Petitioners, 11 Broad Street, Charleston, 3 S. C.

P. O. Address, Savannah, Georgia.

[fols. 13-15] *Duly sworn to by Joseph De Gracia, et al. Jurats omitted in printing.*

[fol. 16] EXHIBIT "A" TO PETITION

Civil Code of South Carolina of 1942

Volume II

"Section 3304. The state board of fisheries. To carry out the purposes of Sections 3299 thru 3412 there is hereby created the state board of fisheries which body shall consist of three persons having expert knowledge of coastal fisheries and related subjects and not engaged in the same for profit nor interested in any firm or corporation so engaged. They shall be separately appointed and commissioned by the Governor for the term of three years each, except for the first appointees thereunder, one of whom to be designated as the chairman, shall be appointed for three years, one for two years and one for one year, and shall be a body corporate, which appointees shall consist of the present board of fisheries of South Carolina, until their several terms of office expire."

[fol. 17] EXHIBIT "B" TO PETITION

Civil Code of South Carolina of 1942

Volume II

"Section 3301. Jurisdiction of state board of fisheries.—The state board of fisheries shall have and retain jurisdiction over all salt water fish, fishing and fisheries, and all fishing, fish and fisheries in all tidal waters of the State and all fish, fishing and fisheries in all waters of the State whereupon a tax or license is levied for reason of commercial purposes. This includes the following: all shellfish, crustaceans, diamond back, terrapin, sea turtles, porpoises, shad, sturgeon, rock, herring, and all other migratory fish."

[fol. 18] EXHIBIT "C" TO PETITION

Civil Code of South Carolina of 1942

Volume II

"Section 3308. Board to enforce laws. It shall be the duty of the board of fisheries to impartially enforce all laws pertaining to fish and fisheries."

[fol. 19] EXHIBIT "D" TO PETITION

Civil Code of South Carolina of 1942

Volume II

"Section 3310. Board to make rules, etc.—penalties for violation.—The board shall have authority to adopt and promulgate rules and regulations for the government of the force under their control and for the control of fisheries, not contrary to or inconsistent with the laws and policy of the State, having the force and effect of law and to provide penalties for violation thereof not to exceed forfeiture of license or privilege previously granted by said board."

[fol. 20] EXHIBIT "E" TO PETITION

Civil Code of South Carolina of 1942

Volume II

"Section 2038. Jurisdiction of the State of South Carolina. The sovereignty and jurisdiction of this State extends to all places within its bounds, which are hereby declared to be as follows:

The northern line beginning at a point on the seashore about a mile and a quarter east of the mouth of Little River, runs in a northwest direction sixty-four and one half miles, to a point two miles northwest of one of the branches of Little Pee Dee River; thence, in the same direction, twenty-two miles, to a stake in a meadow, thence, in a direction due west, a distance of sixty-two miles, to a point where the said line intersects the Charleston Road (at sixty-one miles) near the Waxhaw Creek; thence north two degrees, twelve and one-half minutes, east eight miles to a gum tree on the southeastern corner of the Catawba Indian Reservation as laid out in 1764; thence following the eastern and northern boundary lines of the said Catawba Indian Reservation to where the said northern boundary line crosses the thread of the Catawba River; thence up the thread of the said river to the confluence of the north and south forks thereof; thence west to a stone on Tryon Mountain marked "S. C.

and N. C., September 15th, 1815," thence from a stone set up and marked "S. C. and N. C., September 15th, 1815," running west four miles and ninety poles to a stone marked "S. C. and N. C.;" thence south twenty-five degrees west, one hundred and eighteen poles to a chestnut tree on top of a ridge dividing the waters of the north fork of Pacolet River from the waters of the north fork of the Saluda River; thence along the various courses of the said ridge (agreeably to the plat and survey of the commissioners and surveyors accompanying their report, dated 2nd November, 1915,) to the ridge that divides the Saluda waters from those of Green River: thence along the various courses of the said ridge, agreeably to the said plat and survey, to a stone set up where the said ridge joins the ridge which divides [fol. 21] the eastern and western waters, and which stone is marked "S. C. and N. C., September 28th, A. D. 1815;" thence along the various courses of the said ridge, agreeably to the said plat and survey, to a stone set up on that part of it which is intersected by the Cherokee boundary line, run in the year 1797, and which stone is marked "S. C. and N. C., 1813;" and from the said last mentioned stone, on the top of the said ridge, at the point of intersection aforesaid, a direct line south, sixty-eighth and one-fourth degrees west, twenty miles and eleven poles, to the thirty-fifth degree of north latitude, at the rock in the east bank of the Chattooga River, marked "Latitude thirty-five degrees, A. D. 1813;" which line from the termination of the line of 1772 to the Chattooga River, is, in all, a distance of twenty-four miles and one hundred and eighty-nine poles.

From the State of Georgia, South Carolina is divided by the Savannah River, from its entrance into the ocean to the confluence of the Tugaloo and Seneca Rivers; thence up the Tugaloo River to the confluence of the Tallulah and the Chattooga Rivers; thence up the Chattooga River to the 35th parallel of north latitude, which is the boundary of North Carolina; the line being midway between the banks of the said respective rivers when the water is at ordinary stage; and where the rivers are broken by islands of natural formation, which, under the treaty of Beaufort, are reserved to the State of Georgia, the line is midway between the island banks and the South Carolina banks when the water is at ordinary stage.

On the east the State is bounded by the Atlantic Ocean, from the mouth of the Savannah River to the northern boundary, near the mouth of Little River, including all islands.

[fol.22] EXHIBIT "F" TO PETITION

Civil Code of South Carolina of 1942

Volume II

"Section 3300. Jurisdiction.—The waters and bottoms of the bays, rivers, creeks and marshes within the State or within three miles of any point along low water mark on the coast thereof, not heretofore conveyed by grant from the Legislature or lawful compact with the State, shall continue and remain as a common for the people of the State for the taking of fish, subject to the provisions of Sections 3299 thru 3412 and any future act that may be passed; provided, the privisions of Sections 3299 thru 3412 shall not apply to fish or fishing in the fresh waters of this State."

[fol. 23] EXHIBIT "G" TO PETITION

Title

To amend Section 3379, Code of Laws of South Carolina, 1942, so as to provide for the licensing of out-of-state shrimp boats and shrimp boats owned by residents of this state, and to limit the number of non-resident licenses to be issued annually, to provide for preferences in issuing such licenses, to provide that the payment of income taxes of the owner of the boat shall be a prerequisite of the issuing of such licenses, and to provide penalties for the violation of the provisions thereof.

Section 1. That Section 3379, Code of Laws of South Carolina, 1942 be and the same is hereby, amended by inserting after the words "South Carolina" on line 3 thereof the following: "and the below listed licenses are hereby levied annually upon shrimp boats owned by non-residents of this State and shrimp boats owned by residents of this State"; and by adding at the end of said Section the following: "All

owners of shrimp boats who are residents of the State of South Carolina, shall take out a license for each boat owned by him, and said license shall be Twenty-five ($25.00) Dollars per year, and all owners of shrimp boats who are non-resident of the State of South Carolina, and who have had one or more boats licensed in South Carolina during each of the past three years, shall take out a license for each boat owned by him and said license shall be One Hundred and fifty ($150.00) Dollars per year, and all owners of shrimp boats who are non-residents of the State of South Carolina and who have not had one or more boats licensed during each of the past three years shall take out a license for each boat owned by him and said license shall be Two Thousand five hundred (2,500.00) Dollars per year", so that said Section when so amended shall read as follows:

"Section 3379. The following license tax is hereby levied annually upon the different fishing appliances except sturgeon nets, used in the waters of South Carolina and the below listed licenses are hereby levied annually upon shrimp boats owned by non-residents of this State and shrimp boats [fol. 24] owned by residents of this State: Anchor gill nets, stake gill nets, and drift gill nets, twenty-five (25) cents for each one hundred (100) yards or fraction thereof. Trap nets, floating, one dollar and fifty ($1.50) cents each. Submerged trap nets, three ($3.00) dollars each. Shrimp trawl nets, five ($5.00) dollars each. For any apparatus used and not above unumerated, other than cast nets and hook and line, the license shall be the same as that provided for the apparatus or appliance which it most resembles. All owners of shrimp boats, who are residents of the State of South Carolina shall take out a license for each boat owned by him, and said license shall be twenty-five ($25.00) dollars per year, and all owners of shrimp boats who are non-residents of the State of South Carolina, and who have had one or more boats licensed in South Carolina during each of the past three years, shall take out a license for each boat owned by him and said license shall be One Hundred and Fifty ($150.00) Dollars per year, and all owners of shrimp boats who are non-residents of the State of South Carolina and who have not had one or more boats licensed during each of the past three years, shall take out a license for each boat owned by him and said license shall be Two thousand five hundred ($2,500.00) dollars per year."

Section 2. That the State Board of Fisheries shall not

grant non-resident licenses to operators of shrimp boats on and after July 1, 1947, in excess of one hundred (100) per year. That in granting licenses to non-resident shrimp boats, the State Board of Fisheries is to give preference to issuance of licenses to those non-resident boats that have been fishing in South Carolina for the longest number of year-; Provide-, however, that applications for license by such boats, or the operators of such boats be made on or before June 1st of the respective year. If, by June 1st of a respective years, the Board of Fisheries has not granted one hundred (100) licenses to the operators of non-resident shrimp boats which have operated in South Carolina for the longest number of years, then the Board of Fisheries may grant such licenses to any applicants therefor until the number of one hundred (100) licenses have been issued.

[fol. 25] Section 3. The Board of Fisheries, before issuing any non-resident license in the year 1948 and thereafter, shall require proof that the owner of the non-resident boat has paid all income taxes due to the State of South Carolina for profits made from operations in South Carolina during the preceding year.

Section 4. It is mandatory upon the State Board of Fisheries to revoke immediately, and have its designated Inspector take up, any license issued to a resident or non-resident operator of a shrimp boat upon conviction of any violation of any of the fishing laws, to-wit: First offense, ten days; second offense, thirty days; third offense, one year.

Section 5. All fines and forfeitures for the violation of any of the Coastal Fisheries Laws shall be paid to the Treasurer of the County in which the violation occurs, if, and only if, the case of violation of said Fisheries Laws is brought by an officer of the State or County other than an inspector for the Board of Fisheries. Provided, that no license shall be granted to residents of a state if under the laws of that state licenses to trawl for shrimp in that state at the same or less license fee are not granted to South Carolinians applying therefor."

Section 6. All acts or parts of Acts inconsistent herewith are hereby repealed.

Section 7. This act shall take effect upon its approval by the Governor.

[fol. 26] EXHIBIT "H" TO PETITION

Civil Code of South Carolina of 1942

Volume II

"Section 3414. Licensed shrimp trawlers unload and pack and stamp shrimp before shipping or transporting shrimp out of State—All boats licensed by this State to trawl for shrimp in the waters of the State of South Carolina shall land or dock at some point in South Carolina, and shall unload their catch of shrimp, and pack and properly stamp the same before shipping or transporting it to another State or the waters thereof. Any person, firm or corporation violating the provisions of this section shall upon conviction thereof be fined not exceeding five hundred ($500.00) Dollars or imprisoned not exceeding one year, or both in the discretion of the court.

This section shall be a part of the coastal fisheries law, and any equipment or property used in the violation of any of the provisions of this section shall be confiscated, as provided for in Section 3404, 1932 Code."

[fol. 27] EXHIBIT "I" TO PETITION

Civil Code of South Carolina of 1942

Volume II

"Section 3328. Authority of inspectors.—It shall be lawful for the inspectors to enter any and all premises, vessels, boats, houses, sheds or warehouses used in fishing or any fishing industry in the tide waters or coastal section of this State and to arrest, without warrant, all persons found actually violating the penal laws, contained in the coastal fisheries law."

[fol. 28] [File endorsement omitted]

IN UNITED STATES DISTRICT COURT

Civil 1804

EARL J. TOOMER, JOSEPH A. CESARONI, JOSEPH DEGRACIA, S. W. Davies, S. D. Collins, and The Atlantic Seafood Producers, Inc., a corporation, Petitioners,

versus

J. M. WITSELL, EDWARD E. BURROUGHS, E. L. SWEAT, C. L. YOUNG, and J. A. Wilcox, composing the South Carolina State Board of Fisheries, a body corporate and Alonzo B. Seabrook, the Chief Inspector thereof, Defendants

ORDER TO SHOW CAUSE, ETC.—Filed August 6, 1947

The above cause coming on to be heard upon the motion of the Plaintiffs set out in the above entitled motion for an interlocutory injunction against the defendants named in the annexed petition on the verified complaint and on the affidavits of George G. Dodge, President of the Atlantic Seafood Producers, Inc., Earl J. Toomer, Joseph DeGracia, S. W. Davies and S. D. Collins, a majority of the Plaintiffs, verified on the 30th day of July, 1947, and it appearing to this Court that the complaint herein seeks an interlocutory injunction restraining the enforcement of the Statutes of South Carolina set out in said petition by restraining the State Board of Fisheries, its members, agents and employees, and the Chief Inspector, in the enforcement of such Statutes on the grounds of unconstitutionality of said Statutes as provided by Section 266 of the Judicial Code, it is ordered, adjudged and decreed as follows:

1. The Hon. C. C. Wyche of the above Court, hereby calls to his assistance to hear and determine the application for an interlocutory injunction in this cause, the Hon. John J. Parker, Judge of the Circuit Court of Appeals for the Fourth Circuit, and the Hon. George Bell Timmerman, Judge of the District Court of the United States for the Eastern and Western Districts of South Carolina.

2. It is further ordered, adjudged and decreed that said [fol. 29] defendants appear and show cause, if any they have, on the 25th day of August, 1947, at Spartanburg, S. C., at ten o'clock a.m., why an interlocutory injunction

should not issue as complained for in
joining said defendants from the
Statutes of South Carolina as set out i

3. It is furth ordered that said de
required after five (5) days notice by s
petition, order and subpoena, to be an
in the United States District Court a
Carolina, on the 18th day of August, 1
A.M., and show cause, if any they hav
restraining order should not issue, as
petition.

This 5th day of August, 1947.

(S.) C. C. Wyche, United Sta

[fol. 30] [File endorsement omit

IN UNITED STATES DISTRICT

[Title omitted]

AMENDMENT TO PETITION—Filed A

Now come the Plaintiffs in the abov
matter and by leave of the Court first
amend the petition heretofore filed in th
lars, to-wit:

1. By adding after Paragraph One
paragraph designated as follows:

"1a. That the Atlantic Seafood Prod
profit organization composed of comme
are citizens of the United States domici
Georgia, Florida, South Carolina an
operating fleets of fishing vessels and
the open seas off the coastline of said S
ation being organized for the mutual
welfare of its members and is engage
study for the improvement of ocean fis
of its members."

2. By adding after Paragraph Four
paragraph designated as follows:

"4a. That the trawling for shrimp, p
of the territorial waters, consisting of
rivers, inland streams and estuaries in

Carolina is expressly prohibited at all times by Statute as set forth in the 1942 Civil Code of South Carolina, Volume 2, Section 3410 thereof. A copy of said Section being hereto attached and made a part hereof marked Exhibit "J." That Sections of said 1942 Code from 3300 through 3414 [fol. 31] herein set forth and complained of are all Statutes enacted by the State of South Carolina solely for the control, including the licensing and taxing, of all fish, fishing and fisheries in the open seas within three (3) miles along the low water mark of the coast of said State."

3. By adding after paragraph Six (6) the following paragraph designated as follows;

"6a. Petitioners show that their fishing trawlers are all vessels of less than twenty (20) tons burden net and as such are duly enrolled and licensed in conformity to Title 50 "Regulation of fishing and domestic commerce" of the revised statutes of the United States, to engage in coasting trade and mackerel fishery for the purpose of taking of fish of every description in the coastal waters of the United States, and the States are thereof without legal authority to impose a license, tax, or regulations for operating off the high seas along the shores of the various States, including the State of South Carolina."

4. By adding after Paragraph Ten (10) the following paragraph designated as follows:

"10a. Petitioners further show that the aforesaid Sections 3379 as amended and Section 3414 of the Civil Code of the State of South Carolina hereinabove referred to requiring that all boats operating within three (3) miles of the low water mark of the coast thereof shall be licensed by said state for the purpose of trawling for shrimp and fish and shall land or dock at some point in South Carolina and unload their catch of shrimp and fish and pack and properly affix tax stamps thereon in accordance with impost tax imposed by Section 3374 of the 1942 Civil Code of South Carolina, Volume 2 (hereto attached and made a part hereof [fol. 32] marked Exhibit "K") before shipping or transporting said shrimp or fish to another state or the waters thereof, are unconstitutional in that the same seeks to compel petitioners to import fish and shrimp into the State of South Carolina so that said State may levy an import duty

or tax thereon in violation of Article 1, Section 10, Clause 2 of the Constitution of the United States.

5. By adding paragraph 25 to read as follows:

"25. That the classifications adopted in the act of 1947 known as an act to amend Section 3379 of the Code of laws of South Carolina, set out in said petition as Exhibit "G" and the various sections thereof, are not reasonably related to or supported by the alleged legislative purposes of said act, and are therefore violative of the equal protection clause of Amendment Fourteen of the United States Constitution. The sections that are specifically objectionable are Section One (1) which arbitrarily fixed different licenses without regard to the size or nature of the vessel or the catch hauled in, and basing the same entirely on the residence of the owners of said vessels; and Section Two (2) which undertakes to limit the number of licenses which may be issued to operators of non-resident shrimp boats in an amount not to exceed one hundred (100) and also being limited to those boats which have operated for the longest number of years in the waters off South Carolina, while the number of licenses that can be issued to South Carolina residents are unlimited; and Section Three (3) of said act which has a condition precedent to the issuance of licenses to non-residents requires that they must first furnish proof that they had paid all income taxes due the state of South Carolina for profits made from operations in South Carolina during the preceding year without at the same time, requiring a similar provision of residents of South Carolina. That said Sections show the general [fol. 33] scheme of said statute to be one designed to discriminate against and to render impossible fishing and shrimping by non-residents, and to seek to sustain its legality under the cloak or guise that the statute is a conservation measure.

Thomas P. Bussey, Robert E. Falligant, Phyllis Kravitch, Aaron Kravitch, 11 Broad Street, Charleston 3, S. C.

Amendment allowed subject to objection. This — day of ——, 1947.

(S.) C. C. Wyche, Judge, United States Court.

[fol. 34] EXHIBIT "J" TO AMENDMENT

Civil Code of South Carolina of 1942

Volume II

"Section 3410. Trawling for shrimp prohibited.—The trawling for shrimp in any stream, bay, sound or river within this State is hereby prohibited.

Any person, firm or corporation violating the terms of this section, upon conviction, shall be fined not more than one hundred ($100.00) dollars or imprisoned not more than thirty days."

[fol. 35] EXHIBIT "K" TO AMENDMENT

Civil Code of South Carolina of 1942

Volume II

"Section 3374. Scale of fisheries' tax.—The following fisheries' tax is hereby imposed upon all fish or fisheries products taken or canned, shucked or shipped for market, to-wit: on each sixty ounces of canned oysters two cents; on every gallon of shucked oysters five cents; on every bushel of clams in the shell ten cents; on each bushel of oysters in the shell ten cents; on each terrapin (during the open season) five cents; on soft crabs, two cents per dozen; hard crabs, ten cents per bushel; on crab meat, two cents per gallon; shrimp, when cooked, one cent for each sixty ounces or fraction thereof; on each pound of green shrimp, one-eighth of one cent. Provided, that and impose tax of five (5) cents shall be put upon each white shad and two (2) cents upon each hickory shad offered for sale, or shipped from any point in the state to any point within or without the state; Provided, that the license tax on raw oysters shall be five cents per gallon whether sold to local consumers or otherwise, and where said oysters are sold in less than gallon lots, a tax stamp shall be affixed at the rate of five cents per gallon. Provided, that a like tax on all shad imported into this State shall be subject to the same tax as herein provided before the same may be offered for sale. Provided, Further, that there is hereby imposed a tax of two (2¢) cents on each sixty ounces of canned clams and five (5¢) cents per gallon on raw shucked clams."

[fol. 36] [File endorsement omitted]

IN DISTRICT COURT OF THE UNITED STATES

[Title omitted]

RETURN TO RULE TO SHOW CAUSE ON TEMPORARY RESTRAINING ORDER—Filed August 18, 1947

The defendants herein by way of return to the rule to show cause of this Honorable Court dated 5 August 1947 as to why a temporary restraining order should not issue as prayed for in the petition herein, would respectfully show to the Court:

1. That the defendants admit their official capacities as alleged in the petition we well as the other formal allegations of the petition and admit that for the purpose of this hearing upon plaintiffs' application for a temporary restraining order this Court has jurisdiction of the cause.

2. That plaintiffs have made no showing of any clear and imminent irreparable injury to them through the enforcement of the State Laws alleged to be unconstitutional which would justify a Federal Court of Equity in issuing a tem-
[fol. 37] porary restraining order against enforcement of such State laws.

3. That the petition shows upon its face that the acts of the defendants complained of are proper and that the State laws under which they are proceeding are not in violation of any prohibition of the Federal Constitution.

Wherefore the defendants ask that the temporary restraining order sought herein be refused.

(S.) John M. Daniel, Attorney General for South Carolina; T. C. Callison, Assistant Attorney General; J. Monroe Fulmer, Assistant Attorney General, Attorneys for Defendants.

(S.) Robinson & Robinson, of Counsel.
August 18th, 1947.

[fol. 38] [File endorsement omitted]

IN DISTRICT COURT OF THE UNITED STATES

[Title omitted]

ORDER DENYING MOTION FOR TEMPORARY RESTRAINING ORDER

—Filed Aug. 18, 1947

This matter is before us upon rule to show cause why a temporary restraining order as prayed for in said petition should not issue.

The decision of this question practically amounts to a decision of the issues involved in the hearing before a three-Judge Court to be held one week from today. For this reason we deem it advisable to deny the motion for a temporary restraining order and it is so ordered.

C. C. Wyche, United States District Judge; George Bell Timmerman, United States District Judge.

Columbia, S. C.
August 18, 1947.

[fol. 39] [File endorsement omitted]

IN DISTRICT COURT OF THE UNITED STATES

[Title omitted]

RETURN AND ANSWER—Filed August 25, 1947

By way of Return and Answer the defendants would respectfully show to this Court:

1. They do not have accurate information as to the residence of the plaintiffs. The named defendants are all citizens of South Carolina.

2. On information and belief the defendants deny that the amount in controversy exceeds Three Thousand ($3000.00) Dollars. They admit that the petition questions the constitutionality of certain laws of South Carolina.

3. They admit that South Carolina has passed legislation creating the State Board of Fisheries and defining its functions. They ask reference to the statute law for the

[fol. 40] terms of this legislation. Code 1942, 3299-3421, as amended.

4. They admit that the defendants are the members of the State Board of Fisheries and its Chief Inspector and that these defendants reside in this District. They ask reference to Sections 3300-3414 for their terms.

5. In answer to paragraph five these defendants ask reference to the statutes (Code 2036, 3300) for their terms.

6. They admit, on information and belief, that the individual plaintiffs are engaged in commercial fishing off the South Atlantic coast. They aver, on information and belief, that the corporate plaintiff, The Atlantic Seafood Producers, Inc. is an association of persons engaged in commercial fishing, and not itself engaged in fishing. These defendants have no information sufficient to form a belief as to whether the plaintiffs pay taxes and have licenses from Georgia or Florida. They have no information sufficient to form a belief as to the value of the property belonging to the plaintiffs, as to the volume of their business, but aver that the records of the South Carolina Tax Commission show that none of the plaintiffs paid any South Carolina income or corporation license tax for the year 1946, despite the fact that the plaintiff Cesaroni reported that he had taken more than 43,000 pounds of fresh headless shrimp during the 1946 season. These defendants do not have sufficient information to form a belief as to the size of or whether the plaintiffs' boats are registered under Federal law.

[fol. 41] 7. On information and belief, they admit that the individual plaintiffs have been engaged in commercial fishing along the Atlantic seaboard for a number of years. They deny that the defendants have infringed on any constitutional right of any plaintiff.

8. In answer to the allegations of paragraph eight these defendants aver that the Court records of Beaufort County, S. C., show the following criminal records of the several plaintiffs:

Joseph DeGracia:

(a) Plead guilty i' the General Sessions Court for Beaufort County for nshing on May 14, 1947 out of season in violation of Section 3408, was fined $300.00 ($200.00 suspended)

(b) Plead guilty to a similar violation on June 3, 1947 and received the same sentence.

Samuel D. Collins:

Plead guilty in Beaufort General Sessions Court of violating Section 3408 on June 3, 1947 and sentenced to pay $300.00 ($200.00 suspended).

S. W. Davies:

Plead guilty of violating Section 3408 on June 3, 1947 and sentenced to pay $300.00 ($200.00 suspended).

J. A. Cesaroni:

(a) Bench warrant outstanding for fishing out of season on June 3, 1947 in violation of Section 3408;
(b) Convicted of violating Sections 3408, 3410 on April 18, 1940;
(c) Convicted of violating S. C. Fishery laws October 22, 1943, fined $100.00;
(d) Convicted of violating S. C. Fishery laws August 21, 1945, filed $100.00;
(e) Convicted of violating S. C. Fishery laws August 28, 1945, filed $100.00;
(f) Convicted of violating S. C. Fishery laws August 28, 1945, fined $100.00.

E. J. Toomer:

(a) Charged with violating Section 3408 on Nov. 14, 1938 and forfeited appearance bond;
(b) Convicted of violation of S. C. Fishery law on Aug. 28, 1945 and fined $100.00.

[fol. 42] On information and belief the defendants would further show that warrants have been issued for certain of the plaintiffs as set out herein but that these plaintiffs have to date avoided the service of these warrants:

Samuel D. Collins (Boat "Pearl of the Sea"), Violating Section 3379 on July 8, 1947 (2nd offense);

Samuel W. Davies (Boat "Novelty"), Violating Section 3379 on July 8, 1947 (2nd offense);

Jose DeGracia (Boat "17A614"), Violating Section 3379 July 8, 1947 (2nd offense);

E. J. Toomer (Boat "Ramp"), Violating Sections 3410 and 3414 on July 8, 1947;

E. J. Toomer (Boat "Thunderbolt"), Violating Section 3414 on July 8, 1947;

E. J. Toomer (Boat "Savannah"), Violating Section 3414 on July 8, 1947;

E. J. Toomer (Boat "Mary T"), Violating Section 3414 on July 8, 1947.

9. These defendants ask reference to Section 3379, as amended, for its terms. They allege that this statute is a valid conservation measure authorized by the police powers of the State.

10. On information, advice and belief, these defendants aver that Section 3379, as amended, and Sections 3414, 3374 and 3328 are valid and constitutional.

11. On information, advice and belief, these defendants aver that there is no such common interest as would entitle the plaintiffs to join their several complaints in this single suit.

12. On information, advice and belief, that the warrants referred to in paragraph 12 are those referred to hereinabove in paragraph 8, though there seems to be a slight [fol. 43] difference in dates. That while these warrants have been issued the plaintiffs have avoided service, though by submitting to trial they could raise in the General Sessions Court the constitutional questions alleged here.

13. These defendants aver that under their duty to impartially enforce the laws they cannot sit idly by and watch the plaintiffs violate Sections 3379, 3408, 3410 and 3414, and if they found the plaintiffs violating these laws they would ask for warrants for their arrest but they deny that they have made any threats. These defendants specificially deny that they have threatened to seize or confiscate any boat or equipment of the plaintiff because it is the opinion of these defendants that the power to seize such property once given by Section 3414 was repealed by the Act of 1940, page 1695, which repealed Sections 3403 and 3404 of the 1932 Code. Therefore these defendants have not seized nor threatened to seize any of the plaintiffs' property. These defendants have no inofrmation sufficient to from a belief as to the financial affairs of the plaintiffs.

On information and belief, that E. J. Toomer, one of the plaintiffs has formed a South Carolina corporation, the "Port Royal Seafood Co.", of which he is President and has continued his fishing operations in that name.

14. On information, advice and belief, these defendants deny that these State laws violate any provision of the Federal Constitution as alleged in paragraphs 14-19, 25 of the complaint, and on the contrary aver that they are valid conservation and inspection measures, setting up reasonable classifications and not in conflict with any provision of Federal law.

[fol. 44] 15. In answer to the allegations of paragraph 20 these defendants aver that the plaintiffs may test the validity of the South Carolina law in the criminal proceedings now pending or they may question these same provisions in the civil courts of South Carolina.

16. On information and belief, the fishing laws of South Carolina were passed as conservation measures and that the revenue features of these laws are for the purpose of providing inspection funds and in fact have not produced sufficient revenues for that purpose.

17. In answer to the allegations of paragraphs 22, 23, 24 and 25 of the complaint these defendants aver that there is no equity in the bill, in that there is available an adequate remedy at law; in that no irreparable damage within the meaning of that term as used in equity has been alleged or suffered by the plaintiffs; in that the plaintiffs as habitual violators of the fisheries laws and as persons who are evading the service of criminal warrants have no standing in equity; and because the South Carolina laws questioned here are valid enactments of the General Assembly of South Carolina.

Wherefore the defendants ask that the injunction be denied and the bill dismissed.

(S.) John M. Daniel, Attorney General; T. C. Callison, Asst. Attorney General; J. Monroe Fulmer, Asst. Attorney General, Counsel for Defendants.

(S.) Robinson & Robinson, of Counsel.
August 25, 1947.

[fol. 45] [File endorsement omitted]

IN UNITED STATES DISTRICT COURT

[Title omitted]

STIPULATION AS TO FACTS AND TESTIMONY—Filed October 20, 1947

It is agreed and stipulated between the parties through their counsel of record that:

1. The cause in question was submitted to the three-Judge Federal Court composed of Hon. John J. Parker, U. S. Circuit Judge; Hon. C. C. Wyche, U. S. District Judge; and Hon. George Bell Timmerman, U. S. District Judge, for final decision and decree.

2. It is admitted and agreed that the appellees were not threatening the confiscation of appellants' boats for the violation of the fishery laws attacked and have not confiscated any boats for violation of these Sections since 1940, and that the Statute in reference to confication has been repealed by subsequent Statutes.

3. It is stipulated and agreed that the appellants' violations of the Fishery Laws alleged in appellees' return and answer are correct.

4. It is stipulated and agreed that none of the plaintiffs, now appellants, have paid any income taxes to the State of South Carolina.

5. It is stipulated and agreed that the corporate plaintiff, now one of the appellants, is not domesticated in the State of South Carolina.

6. It is stipulated and agreed that the plaintiff, Toomer, now one of the appellants, had transferred ten (10) of his twelve (12) fishing boats to a South Carolina corporation of which he is president.

[fol. 46] 7. It is stipulated and agreed between the parties that while there are warrants that have been forwarded to the Sheriff of Chatham County, Georgia, for the arrest of certain of the appellants for violating alleged fishing statutes of South Carolina, and the said appellants have knowledge of the warrants, under an agreement with the Sheriff they are not being required to submit themselves to arrest or to give bond and to be removed to South Carolina for trial until the validity of certain Statutes can be established.

8. It is stipulated and admitted that the license that South Carolina demands of the appellants is Twenty-five Hundred ($2500.00) Dollars.

9. It is stipulated and admitted that Earl J. Toomer, one of the appellants, has two fishing boats which were used off the coastal waters of South Carolina, and that Joseph A. Cesaroni has eight boats.

10. It is stipulated and admitted that the South Carolina Fishing Commission issued more fishing licenses the year of 1947 than it did in the year 1946. In the year 1946 two hundred fifty-four (254) licenses were issued, of which one hundred fifty-four (154) were for South Carolina residents and one hundred (100) for out of state residents. In the year 1947 two hundred seventy-one (271) had been issued, of which all but fifteen (15) were to South Carolina residents.

11. It is stipulated and agreed that pages one to twelve of the stenographer's transcript dealing with colloquy between the Court and counsel be omitted in the printed record.

12. It is stipulated and agreed that the shrimp fishing season in South Carolina is for a period of eight (8) months, the months of March, April, May and June being closed seasons.

13. It is stipulated and agreed that under the Statutes of South Carolina there is no provision by which a license [fol. 47] or tax can be paid under protest and for which recovery can subsequently be had in the event the Statutes under which said license or tax was paid were subsequently held to be invalid or unconstitutional.

14. It is stipulated and agreed that the boats in question belonging to the appellants comply with the Federal inspection laws and are all licensed by the Federal Government.

15. It is stipulated and agreed that all of the party plaintiff, now appellants, are non-residents of the State of South Carolina, while all of the party defendants, now appellees, are residents of the State of South Carolina, and that the amount involved is more than Three Thousand ($3,000.00) Dollars, and that there is a diversity of citizenship.

16. It is further stipulated and agreed that each of the appellants own one or more boats engaged in the shrimping business and that each of them to fish in the waters off the shores of South Carolina under the present license

tax would be required to pay a Twenty-five Hundred ($2500.00) Dollars' license for each boat, besides being required to bring their catch into a port of South Carolina for the purpose of being packed and for the purpose of paying the required tax on said shrimp as provided for in the Statutes in question and to pay an income tax on the profits made therefrom.

17. It is stipulated and agreed that the stipulations entered into herein, together with the narrative form of the testimony given by the witnesses as condensed from the stenographer's transcript; is to be printed as the evidence in said case and the printing of the stenographer's transcript as part of the printed record is dispensed with.

18. It is further stipulated and agreed that entries of [fol. 48] filing and service are dispensed with, both sides agreeing that all pleadings and all testimony being printed have been regularly filed and that service has been made of all necessary documents as required by law.

19. It is further stipulated and agreed that the testimony of the witnesses was as follows:

S. W. DAVIES, being sworn, testified as follows:

Direct examination by Mr. Falligant:

Witness: "I am a resident of Savannah, Georgia. My name is S. W. Davies. I am one of the plaintiffs in this case. I own one individual vessel and have eight fishing for me. My vessels are tied up as a result of my inability to fish in South Carolina waters. They are tied up at the Savannah Bridge. I am being compelled to maintain part of my crew on my vessels and am being compelled to pay them for that purpose. I won't be able to use these vessels for any other purpose until the last of September when I will use them in Georgia. It isn't profitable to use them in Georgia waters at this time because you don't catch any shrimp. The shrimp follow the season and they work their way down the coast and that is the reason I am not fishing in Georgia waters at this time."

Cross-examination by Mr. Robinson:

Witness: "The name of my boat is the 'NORADY'. It has been tied up now for about three weeks. When we brought this suit it wasn't tied up because we were fishing then in South Carolina waters."

Question by Judge Parker:

Witness: "I have one boat but I have eight individual boats fishing out at my place. All the boats are tied up now for the lack of shrimp in Georgia. The shrimp run on the coast from one state to the other and we follow them up and down the coast."

Questions by Judge Timmerman:

Witness: "My fishing is exclusively for shrimp. None of the other fishermen who are plaintiffs fish for anything other than shrimp as the boats are only rigged out to fish for shrimp."

[fol. 49] *Questions by Judge Parker:*

Witness: "We fish outside in the ocean. At times we are out five or six miles and at times we are right against the shore, according to where we locate the shrimp at. We do not fish in inland waters, but we do fish within the three-mile limit."

Questions by Judge Timmerman:

Witness: "Our fishing season has stopped here. It starts in September and we catch a few shrimp anywhere, but mostly now thay are in Carolina waters. When we are not fishing in Carolina waters we fish in Florida and Georgia. We do not fish in North Carolina or Virginia, nothing but Georgia, Florida and Carolina."

Question by Judge Wyche:

Witness: "In South Carolina."

Question by Mr. Robinson:

Witness: "I plead guilty this year to fishing out of season for my boats but I was not on my boat. My boat did. They had issued a warrant for me, individual, and the lawyer told me we had a case over there and we all went over and all of us plead guilty to the boats. We have captains on the boats and the warrant was issued for me."

Question by Judge Timmerman:

Witness: "I did not send the boats out. The fishermen take that on their ownselves, where to fish at."

Redirect examinatio

Witness: "This fishing
of South Carolina in the
statutes we are attacking
guilty to fishing the open
lina."

Question by Judge

Witness: "We did not
in that proceeding."

Question by Mr. Kra

Witness: "As to whethe
represented over there. W
[fol. 50] to fishing in Car

Question by Mr. Fal

Witness: "That was bef

Question by Judge

Witness: "We do not d
in South Carolina. We r
should have a closed sea
spawn. If we go over ther
the whole bunch of them."

GEORGE G. DODGE, being

Direct examination

Witness: "I am a res
operate a fish and shrim
Georgia, adjacent to the
boats, four of which are m

Question by Judge

Question by Mr. Fa

Witness: "As to wheth
president of the Atlantic

Question by Judge

Witness: "It is a corpo

Question by Mr. Falligant:

Witness: "As a result of these fishing laws which have been enacted and amended in South Carolina, my boats are not fishing in Carolina at the present time. My boats are fishing but very little. There isn't anything for them to catch and most of my boats are tied up. I keep one boat fishing just to see when the shrimp will show up. We send a boat out to try the shrimping. If there is anything there we all go out. In other words, we keep a trial balloon out there. I have not been convicted of any of these offenses. As to whether or not we keep a skeleton crew on the boats while they are tied up, we have to keep the whole crew, as a matter of fact. We have to feed them, and they are always around the dock and it is $10.00 here and $5.00 there. In other words, we have to support them whether [fol. 51] they are working or not. I would estimate that 95 or 98 per cent of the shrimp that are caught enter interstate commerce and most of the shrimp are shipped to New York, Baltimore, Philadelphia and Washington. I did have some facilities in South Carolina for packing and icing shrimp and docking my boats but I have sold them and I do not have any this year. I have four boats and have been engaged in the shrimping business for about fifteen years. I originally fished in North Carolina and I came from North Carolina before I moved to Georgia. The average yield of a boat in quantity of shrimp per week over the fishing season is about twenty boxes a week. I would say the fishing season off the coast of South Carolina runs from eleven to thirteen weeks, from the middle of August, or the first of August, until the end of September. The shrimp then move south. They begin their southward migration about just as soon as it begins to get cool. Since a boat will produce twenty boxes of shrimp a week and the period of fishing off the Carolina coast is an average of twelve weeks, it will give a production per vessel of about two hundred and forty or two hundred and fifty boxes during the South Carolina season with an average net profit per box under the present market conditions of six or eight dollars. On two hundred and forty-eight boxes I think my profit would be Twenty-one Hundred and Twenty ($2120.00) Dollars before the payment of South Carolina tax of Twenty-five Hundred ($2500.00) Dollars. Then if I paid the South Carolina tax of Twenty-

five Hundred ($2500.00) Dollars, the non-resident license, the boat earnings would be insufficient to pay the license because if I packed them in South Carolina I would have to pay a packing charge of Five ($5.00) Dollars a box, which would further reduce my profit. The loss would be so considerable on each boat as to make it prohibitive. From ninety to ninety-five per cent of my shrimp entered interstate commerce, which applies to South Carolina porducers more than Georgia because they don't have the knowledge that Georgia has. I know this of my own knowledge. I have never sold one box in South Carolina. I did operate a business there at one time."

[fol. 52] *Cross-examination by Mr. Robinson:*

Witness: "The Atlantic Seafood Producers, Inc. is not an association of fishermen. It is an association of fish dealers, but the corporation, the Atlantic Seafood Producers, doesn't operate any fishing boats itself. I have not been convicted in the South Carolina courts. I did pay a fine in Beaufort County on November 15, 1945 for unstamped shrimp for one of my negroes. I paid One Hundred ($100.00) Dollars, I think that is right, for two boats; One Hundred ($100.00) Dollars apiece. As a matter of fact, I gave the conservation officer there a check for Three Hundred ($300.00) Dollars to take to the attorney, who paid One Hundred ($100.00) Dollars per boat and One Hundred ($100.00) Dollars legal fee. The violation was for bringing shrimp from Carolina into Georgia and packing them. That was the stamp law. They were unstamped but they were not packed in South Carolina. Inasmuch as I am the president of the Association and a member of the Association, I am one of the plaintiffs in this case. Individually, for my own boats, I am not a plaintiff and I am not a partner now of a person who does have a South Carolina license this year."

Examination by Mr. Falligant:

Witness: "The two fines that I paid for my darkies operating on these boats were for shrimp caught in the marginal belt outside of South Carolina. The inside waters of North Carolina and South Carolina are closed. I paid the catch for my darkies catching the shrimp, and they brought them to Georgia. The fine which was levied against them, which I paid, was for failure to carry those shrimp

which were caught in the marginal belt in the sea into South Carolina and paying a tax on it before bringing it out."

Question by Judge Parker:

Witness: "The shrimp there were caught within the marginal waters of South Carolina."

Question by Judge Timmerman:

Witness: "I did not contest the validity of the act at that time as it was easier to pay a fine than to contest it."

[fol. 53] *Examination by Mr. Falligant:*

Witness: "I would not say that most of my boats this season of the year fish on the boundary line between Georgia and South Carolina. They are fishing farther north than that now. Although most of the time it is on the marginal line. When the shrimp move a little further south on the marginal line, the Savannah River is the dividing line. We drag the shrimp nets up and down the coast, frequently fishing off of two states in one day. We frequently fish outside the three-mile limit and inside the three-mile limit in the same drag, in making a short drag, or dragging in toward shore and backing out. We attempt to follow a mud bottom. The mud bottom sometimes runs off shore in a straight line or sometimes it is parallel with the coast. We sometimes catch shrimp within the three-mile limit of South Carolina and of Georgia, and at the same time, also outside the three-mile limit if we make an off-shore drag starting at South Carolina or Georgia and going out. This was especially true a month ago when we were fishing in the channel at the mouth of the Savannah River. There is no way of determining the identity of the fish caught in South Carolina, Georgia, or outside the three mile limit."

Question by Mr. Kravitch:

Witness: "All these boats comply with the federal inspection laws and licenses."

20. It is further stipulated and agreed that Exhibits "A", "B" and "C" offered in evidence by the appellants shall be printed as part of the appellants' evidence in said case, and that Exhibits "D", "E", "F", "G" and "H" and "I"

offered on behalf of the appellees shall be printed as part of their evidence submitted in said case.

The 16 day of October, 1947.

Robert E. Falligant, Aaron Kravitch, Phyllis Kravitch, Attorneys for Appellants; John M. Daniel, Attorney General; T. C. Callison, Asst. Attorney General; J. Monroe Fulmer, Asst. Attorney General, Attorneys for Appellees.

Robinson & Robinson, of Counsel.

[fol. 54] EXHIBIT "A"

Thirty-Eighth Annual Report of the South Carolina State Board of Fisheries Year Ending June 30, 1944, to the Governor and General Assembly

SUBJECT NUMBER ELEVEN

SHRIMP

May I extend for myself and the State Board of Fisheries sincere best wishes to the men engaged in shrimping for a prosperous season which they so well deserve. People engaged in the shrimping business do not have an easy life. The Chairman of this Board has made trips on the trawlers on many occasions during all kinds of weather, and at times when the catch was good and again when the catch was poor, and well do I know what these men have to go through.

It seems now that shrimp is in great demand in the New England states. The brokers are exerting every effort to increase the number of accounts of reliable shrimpers for the reason that there has been a tremendous demand for more shrimp. I am looking forward to seeing in the near future some live-wire producer in the south begin producing shrimp on a big scale in one pound quick freeze cartons, shipped two dozen per case. I believe there is vast room for improvement in the merchandising of all seafoods. The evolution of selling is changing rapidly, and the fisheries are far behind. The modern house-wife does not want to buy sloppy looking fish in an old fashion market and then have to take the badly wrapped product and mess with a lot of bones.

The large self-service markets have changed everything. Almost everything is packed neatly, easy to pick up, attractive and usually ready to prepare and serve. If more producers would quickly freeze their products, everything from shrimp and oysters to clams for chowder in one pound packages with their own label, they could expect to build up [fol. 55] a large number of customers, good will, and a terrific demand. The day may come when the chain drug stores will have packages of quick frozen shrimp and other seafoods in their freezers for sale to their customers. If this condition comes to pass, it will certainly make the product most pleasing to the consumers and will place large quantities of shrimp and other seafoods before them at all times which should vastly increase their use.

There were 115 shrimp boats operating in South Carolina waters during this season which is a slight increase over the number of boats operating last season. These boats had to operate under many handicaps necessarily caused by war restrictions. There are twenty-two dealers who hold buyers and shippers licenses for shrimp, doing business in South Carolina.

At one time shrimp packing was one of the most important seafood canning industries of the Gulf of Mexico and the South Atlantic area of the U. S., but this industry has reduced its operations very materially recently for the reason, caused by abnormal conditions, of an enormous price and demand for shrimp which yielded more profit raw than if canned. The shrimpers have also suffered very materially from the scarcity of labor.

The shrimp boats operating in our waters are from many other states as we have a very small fleet of shrimp boats owned by South Carolinians. This industry employs a large number of people for heading, packing, catching and icing of shrimp. They purchase large supplies of groceries, spend considerable money for parts and repairs to boats. Therefore, the industry means quite a bit to our State.

We feel that there is an increase in the amount of shrimp in our waters this season, though there will not be as many caught as in normal times on account of restrictions and lack of labor. This condition has existed practically all over the Gulf coast and the Atlantic coast.

Cited by people of authority, an interesting side items concerning shrimp is the fact that it matures at two years of age as a male and during the next season it metamor-

phoses into a female, remaining as such for the rest of its life. These shrimp are caught on the regular grounds, often being brought up in large numbers in nets used to catch fish.

A large number of pounds were landed last year with little special effort to catch them.

[fol. 56] Because of the shortage of shrimp during the spring season, many shrimp canners turned to crab meat, canning that product for the first time, the coordinator's office reported. Of course, this statement applies to the South Atlantic area.

The current season's shrimp pack in the Gulf area to March 27th, was 8% below that for the same period one year earlier and 29% below the five-year average according to the services of New Orleans Fishery Market News office.

This season 39 canneries operating under the Seafood Inspection Service of the U. S. Food and Drug Administration have packed 558,461 standard cases utilizing approximately 37,452,000 lbs. of raw shrimp from July 1st, to March 27th. In the four-week period, February 28th, to March 27th, 1943, there were 1,441 standard cases packed, 18% below the 1,765 cases a similar period a year earlier.

[fol. 57] EXHIBIT "B"

Thirty-Ninth Annual Report of the State Board of Fisheries Year Ending June 30, 1945, to the Governor and General Assembly

SUBJECT NUMBER ONE

SHRIMP

O. C. F. has authorized construction of 2,128 fishing craft. All but 85 of which are expected to be completed before the end of this year. This will make productive capacity greater than at any time in our history. This signifies that the fishing industry should begin to spend more money in merchandising its products than ever before in its history, coupled with the utmost vigilance to market only products of quality. South Carolina is in dire need of having the proper facilities to ice fish, shellfish and cold storage

facilities for same, and other equipment such as proper docks etc. If these facilities were available, in our judgment, it would increase the volume of the fish industry many times.

The two greatest competitors of oyster-cocktail and half shell are the fruitcup and shrimp-cocktail. About one-fourth of the new fishing boats are shrimp trawlers. The addition of 500 new trawlers in the Atlantic area will greatly increase the efficiency of the shrimp fleet and increase its range. The shrimp business in our State is quite an industry, it employs numbers of men and boat crews spend large sums of money on repairs, gasoline, oil and food besides the money that is spent by the individuals personally. The number of shrimp trawlers operating in South Carolina waters for 1944-45 were 156 consisting of boats owned by citizens of South Carolina 77, and 79 owned by out of state people. A number of things may happen at first, production may be greatly increased. Unless the Supply can stand this added strain, and I doubt that it can for long, there will follow a declining catch per unit of effort to the point where many of these boats, particularly the older and less profitable, will enter other lines of fishing. Should the annual harvest decline appreciably, oysters may still hold the place of prominence on the menu without too great an effort on our part. Otherwise South [fol. 58] Carolina had better be ready for an intensive advertising and educational program relative to oysters.

Shrimp are generally recognized as being a highly perishable food. Unlike meats they are susceptible to a ripening process. It is, therefore, essential to keep them packed in ice or stored at temperatures low enough to prevent spoilage or to subject them to some form of preservation. With such a product speed, and distribution to consuming centers is a factor of importance. This is particularly true because of the fact that the great bulk of our catch is taken on the high seas or along our coast far distant from the inland market. These facts appear to be substantiated by reports of air shipments, such as shrimp from New Orleans to St. Louis and Chicago, and from Houston to Kansas City and Chicago. And the same thing would apply to shipments from Charleston to New York and other northern markets.

In the beginning, while cost of transportation and price are primary considerations, the hotels and restaurants promise to be the best outlets for airborne shrimp and other

seafood shipments. From other sources I have been informed that new, light weight, corrugated boxes, practically waterproof, have been perfected which may help to solve the problem. The tendency of consumers to *be* most of their buying of shrimp and other seafoods on the last three days of the week, and the uncertainty of the supply at the production points, gives the air services an advantage upon which it can readily capitalize. It is an old American custom to look for speed, more speed and still more speed. Considering the perishability of all seafoods, if the air transport service will attack the problem of providing satisfactory containers, reasonable rates and adequate pick up and delivery service, I believe they have a real opportunity for building a volume of shrimp and other seafood product shipments by air and should be in a position to render a real service in popularizing the use of seafoods by our people.

With an annual production of between four and five billion pounds of fishery products, you have a real opportunity to handle appreciable quantities of such products just as the [fol. 59] trucks make heavy inroads on the volume of fish formally carried by railroads. And don't forget the thousands of small hamlets that rarely get fresh seafoods and the largest cities at present inadequately supplied with these choice delicacies of the seas, and, especially, make certain that these packages bear labels to show that they were airborne quality foods. It looks as if this program will be put into effect, and if it is, it will revolutionize the seafood industry in our section as well as in the other parts of the country. It should increase the consumption of same in large quantities; it will also create a much greater demand for shrimp and seafoods all over the universe, and it will place them in sections where they are very seldom consumed with the result that many more people will get sold on the idea of eating same.

We are expecting an enormous increase in the volume of shrimp during the coming year as the war restrictions will be raised, and we are expecting labor to be plentiful. There will be an increase in the number of boats and the demand is large, and, we think, will take up our increase for the coming year.

Shrimp caught, in pounds, during the year of 1944-45 in the coastal waters of South Carolina amounted to 2,548,955. Shrimp headed, in pounds, amounted to 1,535,355.

The Atlantic States Marine Fisheries Commission, of which Senator J. D. Parler and Charles J. Geilfuss are members, and J. M. Witsell, Chairman of the State Board of Fisheries is Chairman and also on the Executive Committee, has been exerting every effort possible to have uniform laws passed by the adjoining states. And now that Florida has become a member of the Atlantic States Marine Fisheries Commission, we feel that it will soon be possible to have these laws perfected. North Carolina has not yet become a member of the above commission and we do not know what her attitude will be, but we believe that Georgia, Florida and South Carolina will soon pass laws that will be beneficial to all of the states adjoining each other, particularly, as to the shrimp industry.

This department has exerted every effort possible this season to protect the shrimp and enforce the shrimp laws, The shrimp season opens July 1st. During the months of April, May and June this department prosecuted 24 shrimpers for violating the law before season opened, 22 of which were convicted, 6 receiving fines of $5.00 each, 14 received fines of $100.00 with $75.00 suspended, 2 receiving fines of $25.00 each.

[fol. 60] EXHIBIT "C"

Fortieth Annual Report of the South Carolina State Board of Fisheries Year Ending June 30, 1946, to the Governor and General Assembly

SUBJECT NUMBER TWO

SHRIMP

The shrimp population reared in North Carolina, South Carolina, Georgia and North Florida can be divided into two groups viz. migratory and non-migratory. The individual spawned early in the season compose the migratory group and those spawned later compose the non-migratory group. The non-migratory group winters in the general locality in which it developes.

The greater portion of the shrimp reared in North Carolina, South Carolina, Georgia and North Florida are migratory moving south along the coast during the fall and wintering in Central Florida. Normally these return in the

spring, however, for the past few years the fishing of these migrant shrimp in Georgia and Florida has been so great that few of them survived to make the northward trip.

Because of the migratory nature of shrimp, control of the fishery cooperatively between the States of North Carolina, South Carolina, Georgia and Florida is needed. True conservation of the Atlantic shrimp supply cannot be obtained until all of the states involved enter into a joint program for the mutual benefit of all. J. M. Witsell, Chairman of the South Carolina State Board of Fisheries will, in the near future, confer with the heads of the conservation departments of Georgia and Florida in the hope of working out some plan by which we can have cooperation and reciprocal agreements so that the head of each of these departments can present them to the different legislatures of the above states and see if we can't get them enacted. The following resume and revue of the trend of the fishery will enable one more adequately to judge the present conditions. A nine year study of the life and habits of shrimp undertaken by the Bureau of Fisheries, Department [fol. 61] of the Interior, in cooperation with the conservation agencies of the states in the South Atlantic and Gulf has disclosed much that was previously unknown. The methods employed in securing this information included years in sampling the South Atlantic fisheries over the entire range, the tagging of thousands of shrimp from South Carolina to Florida, the collection of eggs, larvae and young through the fishery area to the fathom line from Cape Hatteras, North Carolina and a completed survey of the creeks, rivers, sounds and outside grounds of the fisheries in Georgia and North Florida, and a great store of general information acquired during the course of this investigation.

The accumulation of the facts secured by the above described means shows that the spawning occurs from March into September in the open waters of the Atlantic Ocean. At an early stage of their development the young shrimp move to brackish inside waters. These inside inland areas are nursery grounds of the young shrimp. As the young increase in size they seek waters of higher salinity. This results in the continued movement of young shrimp from creeks and rivers into sounds and, eventually, to the outside from the summer to the next spawning season. The first of these young have advanced sufficiently to appear in the

fishery by mid July. As the summer progresses the influx of the young into the fishery rapidly increas- until by September the fishery is practically entirely dependent upon this group of immature shrimp.

As the number of young shrimp increase in the fishery the number of spawning adults decrease and by September have practically disappeared from the fishery. However, with the warming of the waters in the spring the small shrimp that wintered in the more northern area begin to grow very rapidly and at the same time their sex products mature for the approaching spawning.

The shrimp industry has grown very materially during the past season over the previous season. I will show you the figures of the past season which was 1944-45 and the present season which is 1945-46. The boats operating in South Carolina in 1944-45 were 156 consisting of boats owned by the citizens of South Carolina 77 and boats owned outside, 79. The number of boats operating in our state in the 1945-46 season was 254. Number of boats owned by citizens of South Carolina was 154. Number of boats operating in state by outsiders was 100. We are very much [fol. 62] pleased to see the decided increase of the state owned boats operating in this state.

The number of pounds of shrimp caught during the season of 1944-45 in the coastal waters of South Carolina amounted to 2,548,955 lbs. Shrimp headed amounted to 1,535,355 lbs. in the 1944-45 season. Shrimp caught in the South Carolina waters in the 1945-46 season amounted to 5,037,065 lbs. Shrimp headed in the 1945-46 season amounted to 3,021,343 lbs. To be able to make this report is certainly a pleasure to the State Board of Fisheries as we are able to show that the catch of shrimp this season was nearly twice as large as in the previous year.

[fol. 63] EXHIBIT "D"

Excerpts from the Thirty-Sixth Annual Report of the South Carolina State Board of Fisheries Year Ending June 30, 1942, to the Governor and General Assembly

(Page 3) "We realize that conservation and enforcement of the laws is the best service that this Board can render the people of this State. In many states where the laws have not been enforced and conservation not taken care of

properly, the results have been a depleted condition of the fisheries. It is wise to take these matters in hand before it is too late; such as our General Assembly did last year in passing a bill relative to the size of crabs to be caught, which action, I think, will go a long way towards keeping our crabs from becoming scarce."

(Page 4) "There has been organized the Atlantic States Marine Fisheries Commission, of which South Carolina is a member, and this department is cooperating with them and hopes in the near future to get in touch with the heads of the commercial fishing industries of the adjoining states and see if it is possible to have uniform laws passed in these states, which we think in many instances would be beneficial to the fishing interests in these states where it is practical to do so."

(Page 15) "Shrimp means a great deal to South Carolina in the way of food and also provides employment for quite a large number of people. It furnishes to many of the inhabitants of the coastal section of South Carolina, in the way of negroes, who are not able to purchase food, considerable help; it also brings in considerable outside money to this State. It provides the citizens a volume of delightful food served in many ways upon their tables. It is of great service to the sport fishermen in the way of bait for catching fish."

[fol. 64] EXHIBIT "E"

Excerpts from the Thirty-Seventh Annual Report of the South Carolina State Board of Fisheries Year Ending June 30, 1943 to the Governor and General Assembly

(Page 3) "Now, more than ever, when seafood is in such demand from every side, the Board of Fisheries is devoting every effort possible to conserve and at the same time to produce more seafood for our citizens and armed forces."

(Page 5) "The South Carolina State Board of Fisheries is now a member of the Atlantic States Marine Fisheries Commission, and we have had some very interesting meetings with the other states that belong to this Commission, and we are now working very hard to perfect plans by which adjoining states could pass uniform laws which would be

beneficial to all, and in the near future we hope to be able to present these proposed laws to the General Assembly of the different states for their consideration."

[fol. 65] EXHIBIT "F"

Excerpts from the Thirty-Eighth Annual Report of the South Carolina State Board of Fisheries Year Ending June 30, 1944, to the Governor and General Assembly

(Page 4) "The board has a triple function in so far as all of its activities are concerned. The first is to conserve and develop our seafood products. The second, to see that the revenue is collected from the activities of commercial fishing as stipulated by law and the third, to see that the commercial fishing laws are enforced so as to protect and conserve the natural resources of our State."

(Pages 4-5) "The State Board of Fisheries, through its Chairman, J. M. Witsell, who is also Chairman of the South Carolina Branch of the Atlantic States Marine Fisheries Commission, and who with Senators J. D. Parler and Chas. J. Geilfuss are members of the Marine Fisheries Commission of South Carolina, have been doing all within their power to have uniform laws passed by the adjoining states which they feel in many instances would be very beneficial to the fishing interests of these states. Officers of the Marine Fisheries Commission have attended many meetings of the Atlantic States Marine Fisheries Commission and they feel that something has been accomplished along this line."

(Page 5) "This department tries in every way possible to cooperate with the people engaged in the seafood business so as to assist them in conducting their business on a profitable and businesslike basis. Due care is taken that the favors granted these operators do not interfere with the chief purpose and ultimate object of this department."

[fol. 66] EXHI

Excerpts from the Thirty-n
Carolina State Board o
30, 1945, to the Governo

(Page 3) "This departu
the General Assembly at i
appoint a committee to inv
commercial fishing in South
deal can and will be accom
there are several laws that
laws that should be changed
and the fishermen. This
every way possible with t
and we will make certain s
certain laws, and the cance
of others that we deem adv

(Page 3) "Now that the
tions will soon be normal a
crease in the production;
plentiful and thereby place
profitable basis. It is very
which this department can
servation, particularly, as
men operating in the future

(Pages 3-4) "Commercia
industries that South Caro
thousands and thousands
ployment for great numbe
coastal area of this State,
going to their back door an
and catching fish. Many o
if this God given right was

(Page 4) "From this,
[fol. 67] department needs
of the year than they do at
ling and enforcing the laws
hope that the investigating
consideration when it mak
Assembly."

(Page 5) "The commerci
portant at present than it h
tion of this department in
needed food for our people."

[fol. 68] EXHIBIT "H"

Excerpts from the Fortieth Annual Report of the South Carolina State Board of Fisheries Year Ending June 30, 1946, to the Governor and General Assemly

(Page 4) "This department has a dual function to perform inasmuch as its duties are concerned first to conserve, develop, and make useful to the people of the State the vast potentialities in the products by the waters of this area. It also takes a great deal of planning, effort, time, etc., to see that the laws are enforced properly and that our natural resources have not been infringed upon and depleted. In handling the management of these large resources the Board has considered conservation and protection of the resources first and also has seen that the revenue required by law has been paid into the State. It has endeavored to stimulate the propagation of oysters in the natural beds."

(Page 5) "The fishing industry has changed greatly in the past few years, so has every other line of business, for instance, in enforcing the laws against the shrimpers who violate laws by coming into prohibited areas, not obtaining licenses and other violations, we formerly used in the enforcement of these laws small cabin cruisers and a speed boat, now we find that they are entirely inadequate for enforcement of these laws, therefore, we have now changed the method of enforcing these particular laws and employ airplanes by which we go into an area where these trawlers are violating the law and by flying down close to the water get the number of the boat, the exact place that he is fishing, the time of day that he was caught, measure the distance that he is fishing and establish whether or not he is in a polluted area and if so make an iron clad case against the law violator."

[fol. 69] EXHIBIT "I"

"The annual reports of the South Carolina State Board of Fisheries for the past five years were offered and received in evidence. They show that the cost of the Board's Operations exceeded the revenue collected in each of those years, the deficits being: For 1941-42 $5,221.04; for 1942-43 $5,979.92; for 1943-44 $8,517.80; for 1944-45 $9,005.50; and for 1945-46 $3,359.52."

[fols. 69a-70] IN THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF SOUTH CAROLINA, CHARLESTON DIVISION

EARL J. TOOMER, et al., Appellants

vs.

J. M. WITSELL, et al., Appellees

ORDER APPROVING STIPULATION

The stipulation between counsel of the aforementioned parties under date of October 16, 1947 having been submitted to the Court, the same is hereby approved and ordered filed of record, nunc pro tunc as of the 16th day of October, 1947.

At Charlotte, North Carolina, this 3d day of December, 1947.

(S.) John J. Parker, Judge, U. S. Circuit Court of Appeals, Fourth Judicial Circuit.

[fol. 71] [File endorsement omitted]

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF SOUTH CAROLINA, CHARLESTON DIVISION

EARL J. TOOMER, JOSEPH A. CESARONI, JOSEPH DEGRACIA, S. W. Davies, S. D. Collins, and The Atlantic Seafood Producers, Inc., a corporation, Plaintiffs,

versus

J. M. WITSELL, EDWARD E. BURROUGHS, E. L. SWEAT, C. L. Young and J. A. Wilcox, composing the South Carolina State Board of Fisheries, a body corporate and Alonzo B. Seabrook, the Chief Inspector thereof, Defendants

ON SUBMISSION FOR FINAL DECREE

(Argued August 25, 1947)

Before Parker, Circuit Judge, and Wyche and Timmerman, District Judges

Robert E. Falligant, Thomas P. Bussey, Phyllis Kravitch and Aaron Kravitch, Attorneys for Petitioners; John M. Daniel, Attorney General for South Carolina. T. C. Calli-

son and J. Monroe Fulmer, Assistant Attorneys General, and Robinson & Robinson, Attorneys for Defendants.

OPINION—Filed September 13, 1947

[fol. 72] PARKER, Circuit Judge:

This is a suit by certain citizens of Georgia and a Florida corporation, engaged in fishing for shrimp in the coastal waters off the shores of the States of North Carolina, South Carolina, Georgia and Florida, against the individuals composing the South Carolina State Board of Fisheries, to enjoin the latter from enforcing against plaintiffs the provisions of the South Carolina statutes with respect to fishing for shrimp in South Carolina waters. Plaintiffs do not fish within the inland waters of South Carolina but within and beyond the three mile maritime belt of the coastal waters. They contend that the statutes are void as applied to them on the following grounds: (1) that the State of South Carolina has no jurisdiction of the coastal waters beyond low water mark; (2) that the statutes make arbitrary discrimination between residents and non residents of South Carolina in violation of the Privileges and Immunities clause (Art. IV sec. 2(1) of the Constitution and the Equal Protection clause of the Fourteenth Amendment; and (3) that the statutes impose a tax on imports and a burden on interstate commerce in violation of sections 8 and 10 of Art. I. Interlocutory injunction has been asked; a court of three judges has been convened pursuant to sec. 266 of the Judicial Code; and the case has been heard upon the merits and submitted for final decree.

The facts are that each of plaintiffs is operating boats engaged in fishing for shrimp off the shores of the states above named. The shrimp spend the Winter and multiply in the inland waters of the states and in the Spring and Summer months move out into the coastal waters, where they migrate southward in the Fall and Winter and northward in Spring and Summer. Fishing for them in the inland waters of South Carolina is absolutely forbidden and regulation of the fishing within the three mile maritime [fol. 73] belt is attempted by the statutes of which complaint is made. Section 3300 of the Code provides that these waters, as well as the inland waters, shall be "a common for the people of the state for the taking of fish". Sec. 3379 of the Code imposes an annual license fee of

$25.00 on boats engaged in shrimp fishing, if owned by residents of South Carolina, and of $2500.00, if owned by non residents, with provision that the license required of non residents be only $150.00 if they have operated boats in South Carolina during each of the preceding three years, but that not more than one hundred licenses be issued to non residents. Sec. 3374 imposes a tax of one-eighth cent per pound on green shrimp taken or "canned, shucked or shipped for market"; and sec. 3414 requires all boats licenses to trawl for shrimp in the waters of the state to "unload their catch of shrimp, and pack and properly stamp the same before shipping or transporting it to another state or the waters thereof". Violation of this provision is punishable by a fine of $500.00 or one year's imprisonment or both. Sec. 3407 provides punishment of $1,000.00 fine or six months imprisonment for other violations of the article regulating fisheries for which specific punishment is not otherwise provided.

Preliminary questions have been raised as to the jurisdiction of the court and as to whether injunctive relief is appropriate. It is clear, however, that there is diversity of citizenship and that the cause of action asserted by plaintiffs arises under the Constitution of the United States. Plaintiffs cannot bring themselves within the $150.00 license provision, and as to one or more of them the license fees which they will be required to pay under the act will amount to $5,000.00 or more. If they should not pay the license, the criminal penalties which they would incur by unlicensed trawling would make it impossible for them to continue [fol. 74] trawling in South Carolina waters, and this would involve loss of business for a number of the plaintiffs in excess of $3,000.00 annually. There is no provision for payment of the license tax under protest and suit for its recovery; and it is clear that, if plaintiffs' contention as to the invalidity of the statutes is correct, they are threatened with irreparable injury and have no adequate remedy at law of which they may avail themselves. Ex Parte Young 209 U. S. 123, 155, 162; Kennington v. Palmer 255 U. S. 100; Terrace v. Thompson 253 U. S. 197, 214; Packard v. Banton 264 U. S. 140, 143. The statutes involved are clear and there is no such need for interpretation or other special circumstances as would warrant the Court in staying action pending proceedings in courts of the state, as was

held proper in American Federation of Labor v. Watson 327 U. S. 582, 595, 599.

Defendants point to the fact that certain of plaintiffs have been found guilty of criminal violation of the statutes and say that in proper application of the clean hands doctrine they should not be heard by a court of equity. It is well settled, however, that courts of equity "do not close their doors because of plaintiff's misconduct, whatever its character, that has no relation to anything involved in the suit, but only for such violations of conscience as in some measure affect the equitable relations between the parties in respect of something brought before the court for adjudication. Story, id., sec. 100. Pomeroy, id., sec. 399. They apply the maxim, not by way of punishment for extraneous transgressions, but upon considerations that make for the advancement of right and justice. They are not bound by formula or restrained by any limitation that tends to trammel the free and just exercise of discretion". Keystone Driller Co. v. General Excavation Co. 290 U. S. 240, 245-246; George N. Mas v. The Coca Cola Co., 4 Cir. — F. 2d. —. The matter involved in suit here is the constitu- [fol. 75] tionality of the statutes complained of by plaintiffs, and neither this question nor the equitable relationship of the parties could possibly be affected by plaintiffs' disobedience of the statutes; and, at all events, the matter is one resting in our discretion, and we should not exercise that discretion to refuse a hearing to one who complains that state legislation affecting others as well as himself is violative of rights guaranteed by the Constitution of the United States.

We come then to the principal question in the case, which is whether the statutes are void on the ground that the state has no such jurisdiction over the coastal waters within the three-mile maritime belt as would support such legislation. The question is raised because of the recent decision of the Supreme Court in United States v. California, 67 S. Ct. 1658; but, for reasons hereinafter set forth, we do not regard that decision as controlling, in the absence of any assertion of rights by the federal government. The power of the states over such waters and the fishing rights in them is well settled by a long line of decisions, and we do not understand that it was intended by the decision in the California case to overrule these or to question in any respect the law as declared by them. On the contrary the Court

was at great pains in the California case to distinguish the cases which dealt with the power of the states over fishing in coastal waters.

The right of the state to control the fish running in tide waters was laid down in an opinion by Chief Justice Waite in McCready v. Virginia, 94 U. S. 391, 394, as follows:

> "The principle has long been settled in this court, that each State owns the beds of all tide-waters within its jurisdiction, unless they have been granted away. Pollard's Lessee v. Hagan 3 How. 212; Smith v. Maryland 18 How. 74; Mumford v. Wardell 6 Wall. 436; Weber v. Harbor Commissioners 18 id. 66. In like manner, the States own the tide-waters themselves, and the fish in them, so far as they are capable of ownership while running. For this purpose the State represents its people, and the ownership is that of the people [fol. 76] in their united sovereignty. Martin v. Waddell 16 Pet. 410. The title thus held is subject to the paramount right of navigation, the regulation of which, in respect to foreign and interstate commerce, has been granted to the United States. There has been, however, no such grant of power over the fisheries. These remain under the exclusive control of the State, which has consequently the right, in its discretion, to appropriate its tide-waters and their beds to be used by its people as a common—for taking and cultivating fish, so far as it may be done without obstructing navigation. Such an appropriation is in effect nothing more than a regulation of the use by the people of their common property. The right which the people of the State thus acquire comes not from their citizenship alone, but from their citizenship and property combined. It is, in fact, a property right, and not a mere privilege or immunity of citizenship."

That this right over fisheries applies within the three mile maritime belt and not merely to inland waters was laid down unequivocally in Manchester v. Commonwealth of Massachusetts, 139 U. S. 240, where, however, the precise question related to the control of fishing in Buzzard's Bay. The Court said:

> "Therefore, if Massachusetts had continued to be an independent nation, her boundaries on the sea, as de-

fined by her statutes, would unquestionably be acknowledged by all foreign nations, and her rights to control the fisheries within those boundaries would be conceded. The limits of the right of a nation to control the fisheries on its seacoasts, and in the bays and arms of the sea within its territory, have never been placed at less than a marine league from the coast on the open sea; and bays wholly within the territory of a nation, the headlands of which are not more than two marine leagues, or six geographical miles, apart, have always been regarded as a part of the territory of the nation in which they lie. * * * We do not consider the question whether or not Congress would have the right to control the menhaden fisheries which the statute of Massachusetts assumes to control; but we mean to say only that, as the right of control exists in the State in the absence of affirmative action of Congress taking such control, the fact that Congress has never assumed the control of such fisheries is persuasive evidence that the right to control them still remains in the State."

In Louisiana v. Mississippi, 202 U. S. 1, 52, relating to a complicated boundary dispute between the states named, Chief Justice Fuller stated the rule as follows, citing McCready v. Virginia and Manchester v. Massachusetts, viz.:

"The maritime belt is that part of the sea which, in contradistinction to the open sea, is under the sway of the riparian States, which can exclusively reserve the fishery within their respective maritime belts for their own citizens, whether fish, or pearls, or amber, or other products of the sea."

[fol. 77] Directly in point is the Abby Dodge, 222 U. S. 166. That case involved a federal statute prohibiting a certain type of sponge fishing in the Gulf of Mexico or straits of Florida. The court construed the statute as not having relation to waters within the maritime belt on the ground that fishing there was subject to the control of the state. Directly in point, also, is the case of Skiriotes v. Florida, 313 U. S. 69, which dealt with a statute of Florida which forbade the use of diving equipment for the purpose of taking commercial sponges within the maritime belt as defined by Florida law. Holding that the statute was a valid exercise of state power and that there was no conflict with a federal statute

limiting the size of sponges which might be taken outside state territorial limits, the court said:

> "According to familiar principles, Congress having occupied but a limited field, the authority of the State to protect its interests by additional or supplementary legislation otherwise valid is not impaired. * * * It is also clear that Florida has an interest in the proper maintenance of the sponge fishery and that the statute *so far as applied to conduct within the territorial waters of Florida, in the absence of conflicting federal legislation is within the police power of the state.*" (Italics supplied).

It is worthy of note that, in the case of United States v. California, supra, the Supreme Court quoted from the case of Skiriotes v. Florida, italicizing the language which we have italicized in the above quotation. All four of the cases which we have cited were cited by the Supreme Court and distinguished in the California case; and there was no suggestion that they were being overruled. The California case held that the state was not the owner of the land under the ocean within the maritime belt, and that it could not claim the oil to be derived therefrom against the claim of the United States; but the established doctrine that the state might exercise police power over the maritime belt and control fishing therein was not questioned in the opinion or affected in any way my the decision. It is clear that [fol. 78] very different considerations should govern the decision as to who is to exercise police power over the marginal seas, which can easily be used to interfere with law enforcement on land, or as to who is to control fishing in areas which mean so much to the support of large numbers of people who live near the sea, from those which should govern as to who is to control in the maritime belt the oil to be secured from the land under the ocean, a matter which could easily lead to international controversy. The United States has asserted its paramount authority with respect to oil, but no such authority with respect to fish or fishing: and we see no reason why we should not follow the well settled line of decisions which hold that, in the absence of action by the federal government, the power as to these rests in the several states. If these decisions are to be overruled, the matter is one for the Supreme Court and not for us.

Plaintiffs contend that until the enactment of the fisheries law of 1924 no authority was asserted by the State of South Carolina over the maritime belt and that it was not within the boundaries of the state as set forth in the statute defining them. Code sec. 2038. An examination of the statute, however, shows that the boundary on the east is given as the Atlantic Ocean; and there is nothing in this inconsistent with the intent to exercise authority over the maritime belt in accordance with what is customary under the law of nations. Even if there were, it is elementary that acts of a legislature do not limit the power of future legislatures; and there is no reason why the legislature of 1924 should not exercise the power which under the law of nations and the decisions of the Supreme Court was unquestionably possessed by the state.

We come, then, to the second point made by plaintiffs, i.e., that the discrimination between residents and non residents in the amount of the license fee exacted is violative [fol. 79] of the Privileges and Immunities clause of Article IV of the Constitution and the Equal Protection clause of the Fourteenth Amendment. It is well settled, however, that these constitutional provisions do not require the state to accord equality of treatment to non residents and residents with respect to the taking of fish or animals ferae naturae, the ownership of which is in the state for the benefit of its inhabitants. Geer v. Connecticut, 161 U. S. 519; Ward v. Race Horse, 163 U. S. 504; Patsone v. Pennsylvania, 232 U. S. 138; Haavik v. Alaska Packers' Association, 263 U. S. 510; Locoste v. Department of Conservation, 263 U. S. 545; In re Eberle, 98 F. 295; Anderson v. Smith, 71 F. 2d 493; Commonwealth v. Hilton, 174 Mass. 30, 54 N. E. 362, 45 L. R. A. 475, 478. In the case last cited the rule applicable is stated by the Supreme Judicial Court of Massachusetts as follows:

> "It is now settled that the right of regulation and control of fisheries by the several states in the legislation that secures the benefits of this public right in property to its own inhabitants. The rights, immunities, and privileges which are secured by the Constitution of the United States to the inhabitants of the several states do not include, in favor of inhabitants of any state, rights in common property of the inhabitants of other states. McCready v. Virginia 94 U. S. 391, 24

L. Ed. 248; Wharton v. Wise 153 U. S. 155, 38 L. Ed. 669; Corfield v. Coryell 4 Wash. C. C. 371; Blake v. McClung 172 U. S. 239-249, 43 L. Ed. 432-436."

In the language of Mr. Justice Holmes in Patsone v. Pennsylvania, supra, "It is to be remembered that the subject of this whole discussion is wild game (shrimp), which the state may preserve for its own citizens as it pleases." The benefit to be derived from these shrimp, produced in the inland waters of the state and constituting a valuable source of food and income for large numbers of its people, will be largely lost if out of state fishing boats are allowed to prey upon them without let or hindrance. It is unquestionably within the power of the state, as a proper conservation measure, to require of out of state fishermen a license fee [fol. 80] so high as to limit their number and to reimburse the people of the state in some measure for the loss sustained by them from the fishing of those who are licensed.

Plaintiffs rely upon Pavel v. Richard, 28 F. Supp. 992; but that case is not in point. What was there decided was the special case that a non resident land owner who used his property for raising fur bearing animals was denied the equal protection of the laws by a statute which imposed disproportionate license fees on non resident trappers with whom he had entered into contracts to trap on the property. The general rule that the state may exact higher license fees of non resident hunters and fishermen than of residents and may even exclude non residents from taking fish and game within the state was not considered and no indication was given of any intent to depart from it. If the case could be so interpreted, we should think it not well decided.

There is nothing in the importation or interstate commerce points. With the decision as to the power of the state over fishing in the maritime belt, the whole basis of the importation point goes out of the case. As to interstate commerce, the requirement that the shrimp destined for out of state shipment be stamped and properly packed is a proper regulatory provision. It has reasonable relation not only to maintaining the good reputation of products originating in the state but also to insuring the collection of the one-eighth cent per pound tax, which in the absence of some such requirement could be easily evaded on shrimp shipped out of the state. It is too well settled to admit of argument that a state may regulate the export of articles

in which it has a special property, such as wild game or fish, even if interstate commerce be indirectly affected by the restriction. Geer v. Connecticut, supra; Rupert v. United States, 8 Cir. 181 F. 87; State v. Harrub, 95 Ala. 176, 15 [fol. 81] L.R.A. 761, 36 Am. St. Rep. 195; McDonald v. Sou. Exp. Co., 134 F. 282; 22 Am. Jur. p. 697; note 32 A.L.R. 336 et *seq.*, and cases there cited. It is equally well settled that a tax on articles produced within a state will be sustained, even though they be intended for interstate shipment, where, as here, the tax does not discriminate against interstate commerce and interstate transportation has not commenced. Coe v. Errol, 116 U. S. 517; Heisler v. Thomas Colliery Co., 260 U. S. 245, 258; Hope Natural Gas Co. v. Hall, 274 U. S. 284; Ohio Oil Co. v. Conway, 281 U. S. 146; South Carolina Power Co. v. South Carolina Tax Commission, 52 F. 2d 515; s.c. 286 U. S. 525, 60 F. 2d 528, 288 U. S. 188. Since the tax on shrimp here involved was levied without discrimination against interstate commerce, it was valid; and the requirement for packing and stamping was valid as a proper means of preventing tax evasion. It was proper, also, because of the special property of the people of South Carolina in the shrimp taken within the state.

Argument is made that the tax and requirement for fishing and stamping are invalid because applicable to shrimp caught beyond as well as to those caught within the three mile limit. It would be entirely impractical, however, to differentiate between shrimp taken within and without the limit; and those who avail themselves of the privilege of fishing within the limit are properly required to report their entire catch, since otherwise the reasonable provisions of the statute would be unenforceable. See Mirkovich v. Milnor, 34 F. Supp. 409; Bayside Fish Flour Co. v. Gentry, 297 U. S. 422. In the case last cited, where complaint was made that a California statute applied to fish taken beyond the waters over which the state had jurisdiction, the Court said:

> "Sardines taken from waters within the jurisdiction of the state and those taken from without are, of course, indistinguishable; and to the extent that the act deals [fol. 82] with the use or treatment of fish brought into the state from the outside, its legal justification rests upon the ground that it operates as a shield against the covert depletion of the local supply, and thus tends to

effectuate the policy of the
it less easy. Silz v. Heste

Plaintiffs place great reli
Packing Co. v. Haydel, 278 U
Court held invalid a state stat
tation of shrimp from which
not been removed. No such u
interstate commerce is involv
That the case relied on has n
pears from the analysis made
Co. v. Gentry, supra, where th

"Appellant places grea
tain Packing Co. v. Hayd
of the State of Louisi
shrimp from which the
not been removed. The
was to conserve the raw
and affidavits in support
we held, that this purpose
purpose was to prevent t
as theretofore from Louis
where they were packed
state commerce, and thu
sity to bring about the
canning industries fro
The Louisiana act autho
to be shipped and sold in
that the state might hav
and consumption therein
shipment and sale outsi
shrimp under the authori
the rights of private owne
commerce clause. It is
application to the case u

For the reasons stated, we
plied for should be denied
dismissed.

Injunction denied and cas

We concur in the foregoing

(S.) John J. Parker,
Circuit; C. C. Wych
Western District o

designation in the Eastern District of South Carolina; George Bell Timmerman, U. S. District Judge for the Eastern and Western Districts of South Carolina.

[fol. 83] [File endorsement omitted]

IN DISTRICT COURT OF THE UNITED STATES

[Title omitted]

FINDINGS OF FACT AND CONCLUSIONS OF LAW—Filed September 13, 1947

The Court makes the following findings of fact:

1. The individual plaintiffs are citizens and residents of the State of Georgia and the corporate plaintiff is a corporation created and existing under the laws of the State of Florida. The defendants are citizens and residents of the State of South Carolina composing the Board of Fisheries of that state and charged by law with the enforcement of the statutes of which plaintiffs complain in this suit. The claim of plaintiffs arises out of and is based upon the Constitution of the United States. The amount in controversy exceeds the sum and value of three thousand dollars.

2. Plaintiffs are engaged in fishing for shrimp within and without the three mile maritime belt of the ocean off the shores of the State of South Carolina and defendants are demanding of them that they pay an annual license fee of $2500.00 for each boat engaged in shrimp fishing within the maritime belt, as prescribed by Code sec. 3379 as amended, that they pay a tax of one-eighth of a cent a pound on all shrimp caught by boats fishing within the maritime belt, even though some of such shrimp may have been caught beyond the maritime belt, as provided by Code sec. 3374, [fol. 84] and that they bring all of such shrimp into port and properly pack and stamp them there before shipping them into other states, as provided by Code sec. 3414. Defendants threaten that, if plaintiffs fish for shrimp in the maritime belt without complying with these provisions of the Code, defendants will prosecute them under the penal provisions of the Code, which provide fine and imprisonment for violation of these statutory provisions, and plaintiffs will be unable to continue their business if these statutory penalties are invoked against them.

3. Plaintiffs contend that the provisions of the statutes above mentioned are void as applied to them for that (1) the State of South Carolina is without jurisdiction to exercise statutory authority over fishing within the three mile maritime belt as attempted by said statutes, (2) they are violative of the Privileges and Immunities clause of Article IV of the Constitution and the equal protection clause of the 14th Amendment, in that they discriminate between residents and non residents of the state, and (3) that they impose a burden on interstate commerce and a tax on imports in violation of the Commerce clause of the Constitution. They have submitted the case for final decree.

4. If the contentions of plaintiffs as to the invalidity of the statutes were valid, they would be irreparably damaged by their enforcement and have no adequate remedy at law, in that they would be forced by defendants to pay large sums by way of taxes for which no means of recovery is provided by law, or to desist from fishing in the maritime belt off the coast of South Carolina, which would result in the loss of business for which no compensation is provided, the tax or the injury in case of some of the plaintiffs being well in excess of $3,000.00.

[fok 85] The Court states its conclusions of law as follows:

1. The statutes involved are not beyond the powers of the legislature to regulate fishing for shrimp in the three mile maritime belt off the shores of South Carolina, in the absence of any legislation by Congress with respect to the subject matter.

2. The statutes do not violate the Privileges and Immunities clause of the Fourth Article of the Constitution or the Equal Protection clause of the Fourteenth Amendment.

3. The statutes do not impose an import duty or burden interstate commerce in violation of section 8 or 10 of Article I of the Constitution.

4. The plaintiffs are not entitled to the injunction prayed and their suit should be dismissed.

This the 12th day of September, 1947.

(S.) John J. Parker, U. S. Circuit Judge, Fourth Circuit; C. C. Wyche, U. S. District Judge for the Western District of South Carolina, sitting by designation in the Eastern District of South Carolina. George Bell Timmerman, U. S. District Judge for the Eastern and Western Districts of South Carolina.

[fol. 86] [File endorsement omitted]

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF SOUTH CAROLINA, CHARLESTON DIVISION

EARL J. TOOMER, JOSEPH A. CESARONI, JOSEPH DEGRACIA, S. W. Davies, S. D. Collins, and The Atlantic Seafood Producers, Inc., a corporation, Plaintiffs,

versus

J. M. WITSELL, EDWARD E. BURROUGHS, E. L. SWEAT, C. L. YOUNG and J. A. Wilcox, composing the South Carolina State Board of Fisheries, a body corporate, and Alonzo B. Seabrook, the Chief Inspector thereof, Defendants

FINAL DECREE—Filed September 13, 1947

This cause coming on to be heard by consent at Spartanburg, South Carolina, on application of plaintiffs for an interlocutory injunction to restrain defendants, officers of the State of South Carolina, from enforcing statutes of that state on the ground that they contravene provisions of the Constitution of the United States; and a court of three judges having been convened pursuant to section 266 of the Judicial Code; and evidence having been taken, and arguments of counsel heard and the cause having been submitted for final decree; and the Court having made its findings of fact and conclusions of law which are filed herewith; and the Court being of opinion, for the reasons set forth in the written opinion filed herewith, that the application for injunction should be denied and that the suit should be dismissed:

Now, therefore, it is ordered, adjudged and decreed that the application of plaintiffs for an injunction be and same is hereby denied, and that the suit be and it is hereby dismissed at the cost of plaintiffs.

This the 12th day of September, 1947.

(S.) John J. Parker, U. S. Circuit Judge, Fourth Circuit; C. C. Wyche, U. S. District Judge for the Western District of South Carolina, sitting by designation in the Eastern District of South Carolina. George Bell Timmerman, U. S. District Judge for the Eastern and Western Districts of South Carolina.

[fol. 87] [File endorsement omitted]

IN THE DISTRICT COURT OF THE UNITED STATES

[Title omitted]

PETITION FOR APPEAL—Filed October 3, 1947

And Now Come the Plaintiffs, Earl J. Toomer, Joseph A. Cesaroni, Joseph DeGracia, S. W. Davies, S. D. Collins, and the Atlantic Seafood Producers, Inc., a corporation, and considering themselves aggrieved by the final judgment and decree of the District Court of the United States for the Eastern District of South Carolina, Charleston Division, entered herein on the 13th day of September, 1947, wherein the said Court consisting of the Honorable John J. Parker, U. S. Circuit Judge for the Fourth Circuit, the Honorable C. C. Wyche and Honorable George Bell Timmerman, District Judges, specially constituted under Section 266 of the Judicial Code, denied plaintiff's petition to enjoin the enforcement of certain State Statutes of South Carolina and dismissed petitioners' case, do hereby pray that an appeal be allowed to the Supreme Court of the United States herein for the correction of the errors complained of, and for an order fixing the amount of the bond thereon from said final order and decree, the errors alleged to have been committed to the prejudice of the plaintiffs are set forth in the Assignments of Error which are filed herewith with this petition, and that a transcript of the record, proceedings and papers upon which said decree was made, duly authenticated, may be sent to the Supreme Court of the United States.

Dated this 30th day of Sept. —, 1947.

Aaron Kravitch, Robert E. Falligant, Phyllis Kravitch, Attorneys for Plaintiffs.

[fol. 88] [File endorsement omitted]

IN THE DISTRICT COURT OF THE UNITED STATES

[Title omitted]

ASSIGNMENT OF ERRORS—Filed October 3, 1947

Plaintiffs file the following assignment of errors upon which they will rely on their appeal to the Supreme Court

of the United States from the judgment of this Court entered September 13th, 1947:

The District Court of the United States for the Eastern District of South Carolina, Charleston Division, erred in the following particulars, to-wit:

1. In concluding as a matter of law that the Statutes of the State of South Carolina with respect to the fishing for shrimp within and beyond the three mile maritime belt of the coastal waters of said state are not invalid and unconstitutional as applied to them, for the reason that the State of South Carolina has jurisdiction of said coastal waters beyond the low water mark on the coast thereof and that the legislature of South Carolina may regulate fishing for shrimp in the three mile maritime belt off the shores of said State in the absence of any legislation by Congress to the contrary with respect to the subject matter.

2. That the Court erred in concluding as a matter of law that the said Statutes do not violate the Privileges and Immunities clause, Art. IV Sec. 2 (1) of the Constitution and the Equal Protection clause of the Fourteenth Amendment thereto.

3. The Court erred in concluding as a matter of law that said Statutes do not impose a tax on imports and a burden on interstate commerce in violation of Sections 8 and 10 of Art. 1 of the Constitution of the United States.

[fol. 89] 4. That the court erred in concluding as a matter of law that South Carolina had the legal right to discriminate between the citizens of South Carolina and other states as to a differential of Twenty-five ($25.00) Dollars per year license as applied to residents of South Carolina and a Twenty-five hundred ($2,500) Dollar per year license for residents of other states, and in also requiring non-residents to pay an income tax on fish caught in the ocean by such non-residents and sold outside of the State of South Carolina, and in also limiting the permits issued to non-residents, all of which acts the court held were not illegal, confiscatory or unreasonable discrimination.

5. That the court erred in concluding as a matter of fact and law that the Statutes attacked were conservation measures and within the police powers of the State, the error being that the record and the evidence showed that said Statutes were not conservation measures, but purely tax measures, and said regulations were adopted and used to

discriminate and prohibit fishing by non-residents, and for the purpose of creating a monopoly in favor of the residents of South Carolina.

6. That the Court erred in dismissing plaintiffs' suit and denying the injunctive relief prayed for therein.

Wherefore, Plaintiffs' pray that the said judgment and decree entered in the above entitled cause be reversed and a judgment rendered in favor of plaintiffs and that the plaintiffs be awarded their costs of this appeal.

Aaron Kravitch, Robert E. Falligant, Phyllis Kravitch, Attorneys for Plaintiffs.

[fols. 90-97] [File endorsement omitted]

IN THE DISTRICT COURT OF THE UNITED STATES

[Title omitted]

ORDER ALLOWING APPEAL—Filed October 3, 1947

It appearing to the Court that the Plaintiffs have filed their petition for appeal to the Supreme Court of the United States and have filed therewith their assignment of errors and also their statement as to the jurisdiction of the Supreme Court of the United States as required by Rule 12 of the Supreme Court Rules, duly disclosing that the Supreme Court of the United States has jurisdiction upon appeal to review the judgment and decree in question.

It is ordered that the appeal prayed for be and the same is hereby allowed and granted to the Supreme Court of the United States from the judgment and decree rendered and entered in this cause on the 13th day of September, 1947, and that said plaintiffs give bond with good and sufficient security in the sum of Two Hundred fifty ($250) dollars and that they as Appellants shall prosecute their appeal to effect and answer all damages and costs if they fail to make their appeal good.

It is further ordered that a certified transcript of the record, testimony, exhibits, stipulations and all proceedings be forthwith transmitted to the Supreme Court of the United States under the Rules thereof in such cases made

and provided; and it is further ordered that citation issue returnable forty (40) days from the date thereof.

Dated this 2 day of October, 1947.

(S.) John J. Parker, U. S. Circuit Judge, Fourth Circuit.

[fol. 98] IN THE SUPREME COURT OF THE UNITED STATES

STATEMENT OF THE POINTS TO BE RELIED UPON—Filed November 3, 1947

In accordance with the provisions of paragraph nine (9) of Rule Thirteen (13) of the Supreme Court of the United States, appellants designate as necessary for the determination of said case, a statement of the points to be relied upon by them, viz:

1. That the State of South Carolina did not have the authority to enact the various statutes under attack in this case because it lacked the jurisdiction to enact tax laws beyond the low water mark of the Atlantic Ocean bounding its border on the East, as set out in Section 2038 of the Civil Code of 1942 of the State of South Carolina.

2. That the State of South Carolina did not have the legal right to enact the statute set out in said petition which required a tax to be paid on all shrimp caught on the open sea and which required that said shrimp be brought into the ports of South Carolina for the purposes of taxation, which statute is in violation of the power of a state to tax imports.

3. That the State of South Carolina did not have the legal right to enact the statute set out in the petition known as Sec. 3414 of the Civil Code of the State of S. C. 1942 which [fol. 99] required that shrimp caught off the coast of S. C. be brought into the ports of that State for icing and packing and a payment of a tax on the shrimp to be shipped beyond the limits of the State, said statute being violative of the equal protection, due process, privilege and immunities and an undue burden on commerce, and was not a valid and bona fide health, conservation or police regulation.

4. That the State of South Carolina did not have the legal right to enact the statute set out in the petition and known as amended act of Sec. 3379 of the 1942 Civil Code of S. C., which statute limited the number of licenses which could be issued to non-residents while permitting an unlimited num-

ber to residents and which required that non-residents pay a license of $2500 per year while residents only were required to pay $25 per year, and also required as a preliminary requisite that non-residents pay income tax for preceding years to South Carolina, said statute being violative of the equal protection, due process, privilege and immunities, and commerce clauses of the Const. of the U. S.

5. That the statutes set out in appellant's petition were all part of a general plan or scheme to discriminate unfairly and unjustly against non-residents, and said various acts were so onerous that said non-residents could not shrimp profitably in the waters off S. C. and said statutes were neither bona fide health, regulatory or conservation measures, and being violative of the equal protection, due process, privilege and immunities, and the commerce clauses.

[fol. 100] 6. That appellants had the right to file said bill in equity in a Federal Court of equity, and under the pleadings, evidence and the law were entitled to the relief sought.

7. That the three Judge Federal Court erred in refusing to render a decree in favor of the appellants, the evidence and the law demanding a finding in their favor.

8. That the Supreme Court has jurisdiction to entertain said appeal, and that the facts are of such national importance, and the law involved of such a substantial nature, that said Court should hear said appeal, and subsequently thereafter render decision in favor of appellants on the merits of said appeal.

This October 29, 1947.

John J. Bankou, Robert E. Falligant, Aaron Kravitch, Phyllis Kravitch, Attorneys for appellants.

P. O. Address: Savannah, Georgia.

[fol. 101] ACKNOWLEDGEMENT OF SERVICE

Due and legal service of the within Statement of the Points to be relied on acknowledged. Copy had and received. All other and further service waived.

This October 30, 1947.

John M. Daniel, Attorney General; T. C. Callison, Asst. Atty. Gen.; J. Monroe Fulmer, Asst. Atty. Gen.; Robinson & Robinson, Of Counsel, Attorneys for Appellees.

[fol. 102] IN THE SUPREME COURT OF THE UNITED STATES

DESIGNATION OF THE RECORD—Filed November 3, 1947

In accordance with the provisions of paragraph nine (9) of rule Thirteen (13) of the Supreme Court of the United States, appellants designate as necessary for the determination of the issues involved in the aforementioned case, the following portions of the record, viz:

(1) The original petition filed by the plaintiffs and,
(2) Amendment to said petition and,
(3) Motion, demurrers and answers filed by the defendants, and
(4) Agreed evidence in said case, and
(5) Opinion and judgment of the Court, and
(6) Jurisdictional statement, and
(7) Motion for appeal, order allowing same and grounds for appeal, and
(8) All other parts of the record designated in the stipulations agreed to between counsel.
(9) This designation of the record, and statement of the points to be relied upon.

Note plaintiffs are appellants herein, and defendants are appellees herein.

This October 29, 1947.

John J. Bankon, Robert E. Falligant, Aaron Kravitch, Phyllis Kravitch, Attorneys for Appellants.

[fol. 103] ACKNOWLEDGEMENT OF SERVICE

Due and legal service of the within Designation of the Record acknowledged. Copy had and received. All other and further service waived.

This October 30, 1947.

John M. Daniel, Attorney General; T. C. Callison, Asst. Atty. Gen.; J. Monroe Fulmer, Asst. Atty. Gen.; Robinson & Robinson, Of Counsel, Attorneys for Appellees.

[fol. 103a] [File endorsement omitted.]

[fol. 104] SUPREME COURT OF THE UNITED STATES

ORDER NOTING PROBABLE JURISDICTION—November 24, 1947

The statement of jurisdiction in this case having been submitted and considered by the Court, probable jurisdiction is noted.

Endorsed on cover: File No. 52,645. Eastern South Carolina, D. C. U. S. Term No. 415. Earl J. Toomer, Joseph A. Cesaroni, Joseph DeGracia, et al., Appellants, vs. J. M. Witsell, Edward E. Burroughs, E. L. Sweat, et al., etc. Filed October 27, 1947. Term No. 415 O. T. 1947.